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Supreme Court of the United States

OCTOBER TERM, 1950

No. 426

FRANK W. BABCOCK AND THE CITY OF LOS ANGELES, ETC., ET AL., PETITIONERS,

vs.

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

FILED

APPENDIX

No. 1

In the United States District Court for the District of Columbia

FRANK W. BABCOCK, *Plaintiff*

v.

TIGHE E. WOODS, Individually and as Expediter of the Office of the Housing Expediter, DOE I and DOE II, *Defendants*

Civil Action No. 4669-50

Motion for Leave to Intervene as Plaintiffs of City of Los Angeles, et al

The City of Los Angeles, a municipal corporation organized and existing under and by virtue of the laws of the State of California, and Leland S. Warburton, Lloyd G. Davies, J. Win Austin, Harold A. Henry, George P. Cronk, L. E. Timberlake, Don A. Allen, Ed. J. Davenport, Ernest E. Debs and John C. Holland, as members of and constituting a majority of the Council of said the City of Los Angeles move for leave to intervene as Plaintiffs in this action, in order to assert the claim set forth in their proposed Complaint, a copy of which is hereto attached, on the ground that,

(1) The complaint alleges a failure to comply with a provision of the Housing and Rent Act of 1950 by refusal to decontrol rents in the City of Los Angeles upon receipt of a resolution adopted by Plaintiffs; and

(2) The applicants have a defense to Defendants' claim, presenting both questions of law and fact which are common to the main action, in that the Plaintiff's claim against the defendants is dependent, in part, upon the aforesaid resolution adopted by the Council of the City of Los Angeles.

(3) The Applicant is the administrative agency of the Congress under the "local option" provisions of the Housing and Rent Act of 1950 and adopted the resolution here involved pursuant to its statutory duty under said Act.

RAY L. CHESEBRO, *City Attorney of The City of Los Angeles*

ARTHUR W. NORDSTROM,
Assistant City Attorney

BOURKE JONES,
Assistant City Attorney

JAMES A. DOHERTY,
Deputy City Attorney

By

CHARLES S. RHYNE,
730 Jackson Place, N. W.,
Washington 6, D. C.

Attorneys for Applicants in Intervention

(Caption Omitted in Printing)

No. 2

Complaint of Plaintiffs in Intervention, the City of Los Angeles and Members of Its Council

The Complainants in Intervention allege:

I

The City of Los Angeles is a municipal corporation of the State of California and Leland S. Warburton, Lloyd G. Davies, J. Win Austin, Harold A. Henry, George P. Cronk, L. E. Timberlake, Don A. Allen, Ed. J. Davenport, Ernest E. Debs and John C. Holland are members of and constitute 10 of the 15 members of the Council of the City of Los Angeles.

II

Defendant Tighe E. Woods is now and has been since prior to July 28, 1950, the Expediter of the Office of Housing Expediter.

III

Section 204(j)(3) of the Housing and Rent Act of 1947, as amended, provides as follows:

> "(3) The Housing Expediter shall terminate the provisions of this title in any incorporated city, town, village, or in the unincorporated area of any county upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law and based upon a finding by such governing body reached as a result of a public hearing held after ten days' notice, that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town, village, or unincorporated area in such county: *Provided*, that where the major portion of a defense-rental area has been decontrolled pursuant to this paragraph (3), the Housing Expediter shall decontrol any unincorporated locality in the remainder of such area."

IV

On July 28, 1950, the City Council of the City of Los Angeles published a notice in accordance with Section 204 (j)(3) of the Housing and Rent Act of 1950 of a public hearing to be held on July 28, 1950, to determine whether there existed such a shortage in rental housing accommodations in the City of Los Angeles as to require the continuance of rent control in said City. Sixteen (16) persons in various representative capacities, including an official representative of Defendant, Tighe E. Woods, appeared before the Council at the said public hearing in opposition to decontrol of rents in said City, and thirteen (13) persons

in various representative capacities appeared in favor of decontrol of rents in said City. At and as a result of said public hearing the City Council adopted a resolution providing:

"WHEREAS, Upon and pursuant to notice duly given, a public hearing was conducted by the Council on July 28, 1950, for the purpose of determining whether there exists such a shortage of rental housing accommodations as to require the continuation of rent control in the City of Los Angeles. Now, therefore, be it

"*Resolved*, That the City Council, as a result of the aforesaid public hearing finds that there no longer exists such a shortage in rental housing accommodations as to require rent control in the City of Los Angeles, County of Los Angeles, State of California.

"The aforesaid proceedings were duly had and taken pursuant to the Housing and Rent Act of 1950 (Public Law 574—81st Congress—Chap. 354—2nd Session). Be it further

"*Resolved*, That the Clerk be, and he is hereby directed to certify to the adoption of the foregoing resolution, and that the same was adopted in accordance with local law; and forward a copy thereof, so certified to the Housing Expediter, Washington, D. C."

V

The resolution, quoted in paragraph IV was then forwarded to Defendant Tighe E. Woods and received by him on August 2, 1950.

VI

Defendant Tighe E. Woods on August 14, 1950, at his own request, and without an invitation from the City Council of Los Angeles to do so, appeared before said Council and urged that the Council should have agreed with the views and representations of the said Tighe E. Woods' official

representative at the public hearing on July 28, 1950, and urged the Council to set aside its said resolution adopted on that date as he, Defendant Woods, believed rent control should continue in Los Angeles. Defendant Woods advised the said Council that the reason he, Defendant Woods, was appearing before the said Council was that the decision on rent control in Los Angeles had been left by Congress solely to the said Council to decide. The said Council voted to reject Defendant Woods' recommendation. Defendant Woods then stated that he would return to Washington and sign an order based upon said resolution decontrolling rents in Los Angeles.

VII

On said same date of August 14, 1950, an action was filed in this Honorable Court at or about the time Defendant Woods was meeting with the plaintiff in said action and other opponents of rent decontrol in Los Angeles. An order was signed by this Honorable Court restraining Defendant Woods from carrying out his said promised action of signing the order decontrolling rents in Los Angeles. Defendant Woods offered no defense to said action in this Court but said action was dismissed upon a motion filed by these Complainants in Intervention by this Honorable Court on August 28, 1950.

On October 6, 1950, the United States Court of Appeals for the District of Columbia Circuit affirmed said order of dismissal. On October 7, 1950, Mr. Chief Justice *Vinson* of the Supreme Court of the United States denied a petition for a stay pending the filing of a petition for a Writ of Certiorari. A similar action was dismissed upon a motion by these Complainants in Intervention by the Municipal Court on October 23, 1950.

VIII

Throughout said litigation outlined in paragraph VII, Defendant Woods through his Counsel induced the signing

of various stay orders by representing directly or by implication that if not under such restraint he was required by the Act to sign an order upon receipt of the said resolution of July 28, 1950, decontrolling rents in Los Angeles. Defendant Woods also represented to the said Courts that he had no power to inquire into the evidence before the Council at said public hearing on July 28, 1950. The final such representation being on page 19 of the brief of Defendant Woods filed in the litigation referred to in paragraph IX herein in the United States Court of Appeals wherein the Defendant Woods states:

> "To the extent that appellants may be urging that, in some manner not explained, the Housing Expediter must determine whether the findings fairly flow from the evidence adduced at the public hearing, the Housing Expediter is in sharp disagreement with such a view. The statute does not contemplate that a record of the proceedings be furnished and none has been or presumably would be transmitted to him. When the Resolution plainly sets forth that the required findings have been made and were reached as a result of a public hearing, further inquiry is not required."

IX

On October 23, 1950, the Defendant Woods in violation of his previous representations and in violation of his mandatory duty under Section 204(j)(3) of the Housing and Rent Act did send a letter to the President of the Los Angeles City Council, a copy of which has been filed herein by said Defendant and in which he states, among other things, that based upon information from undisclosed sources he finds the said Council did not have sufficient evidence before it to warrant its finding in said resolution of July 28, 1950, that a shortage in rental housing no longer exists in the City of Los Angeles.

X

The City Council of Los Angeles has submitted to Defendant Woods a certified copy of said Resolution *only*, and Defendant Woods has not requested the City Council or the official custodian of the said Council's records to furnish him with any part of the record of the public hearing on July 28, 1950. The statement in Defendant Woods' letter of October 23, 1950, that there was a lack in said official record of evidence to support the finding in said Resolution of a lack of a housing shortage is untrue as are all the other charges contained in that letter. On none of said charges did Defendant Woods seek any information from the custodian of the official records of the City Council of Los Angeles and said official records directly prove all of his said charges to be untrue. The said letter of October 23 is an arbitrary, capricious and unlawful attack on the integrity of these Complainants for which the order prayed for herein represents the only adequate relief.

XI

A reasonable time within which Defendant Woods could and should have performed his mandatory duty and signed the necessary order decontrolling rents in Los Angeles following receipt of said Resolution of July 28, 1950, is one week after Defendant Woods received said resolution on August 2, 1950. Defendant Woods on August 12, 1950, in a press statement admitted receipt of said resolution and concluded said statement:

> "*The intent of the Congress in passing the local option provision of the present rent law was that the community determine its own destiny.* If the Council wishes its decontrol action of July 28th to stand I will approve it when I return to Washington, assuming the final report of my legal staff indicates it is a legal action. Although the Korean situation has radically

changed the picture since the present rent law was passed *I have no alternative but to carry out the law as it was enacted. My signature on the action merely carries out the final step of placing the decontrol amendment in the Federal Register.*" (Italics supplied.)

Notwithstanding the lapse of more than the said one week and Defendant Woods' said admissions, the said Defendant Woods continues to fail and refuse to take the action required of him by Section 204(j)(3) of the Housing and Rent Act of 1950.

XII

The said actions of Defendant Woods in going to California to appear before the City Council of Los Angeles and his said representations to the Courts in the said legal actions described herein were all done for purposes of delay in planned and deliberate violation of the mandate of Congress contained in Section 204(j)(3) of the Housing and Rent Act of 1950, so as to prevent decontrol of rents in Los Angeles before said Act expires on December 31, 1950.

XIII

Unless Defendant Woods is compelled immediately to sign the said order decontrolling rents in Los Angeles it will be legally impossible to carry out the said provisions of the Housing and Rent Act of 1950 before said Act expires.

The action of the City Council in adopting the said Resolution of July 28, 1950, complied in every respect with Section 204(j)(3) of the Housing and Rent Act of 1950, and Defendant Woods has arbitrarily, capriciously, and unlawfully usurped a power not given to him by said Act in purporting to pass upon facts presented at said public hearing

without receiving or requesting the official record of said facts.

WHEREFORE, Plaintiffs in Intervention, pray:

1. That a preliminary and final mandatory injunction issue ordering the Defendant Tighe E. Woods to sign an order based upon said Resolution of July 28, 1950, decontrolling rents in the City of Los Angeles, California, pursuant to the requirements of Section 204(j)(3) of the Housing and Rent Act of 1950.

2. For such other and further relief as may be proper.

Respectfully submitted,

RAY L. CHESEBRO, *City Attorney of the City of Los Angeles*

ARTHUR W. NORDSTROM, *Assistant City Attorney*

BOURKE JONES, *Assistant City Attorney*

JAMES A. DOHERTY *Deputy City Attorney*

By

CHARLES S. RHYNE, 730 Jackson Place, N. W., Washington 6, D. C.

Attorneys for Plaintiffs in Intervention

I certify that a copy of this Complaint of Plaintiffs in Intervention has been served upon Gordon L. Eakle, 1025 Connecticut Avenue, Washington, D. C., Attorney for the Plaintiff, and Benjamin Friedson, Office of the Housing Expediter, Washington, D. C., Attorney for Defendant, this 2nd day of November, 1950.

CHARLES S. RHYNE.

DISTRICT OF COLUMBIA, *ss.*

Charles S. Rhyne, being duly sworn, says:

That he is a duly appointed Special Attorney for The City of Los Angeles and one of the attorneys for the Complainant parties; that he makes this verification for and on behalf of said parties for the reason that one of said parties is a municipal corporation, of the State of California; that he has read the foregoing Complaint, knows the contents thereof, and verily believes the same are true.

CHARLES S. RHYNE

Subscribed and sworn to before me
this 2nd day of November, 1950
BRICE W. RHYNE
Notary Public in and for the
District of Columbia

My commission expires December 18, 1950.

No. 3

Order Granting Intervention of City of Los Angeles

On consideration of the motion of the City of Los Angeles, a municipal corporation, and Leland S. Warburton, Lloyd G. Davies, J. Win Austin, Harold A. Henry, George P. Cronk, L. E. Timberlake, Don A. Allen, Ed. J. Davenport, Ernest E. Debs and John C. Holland, for leave to intervene as Plaintiffs, it is

ORDERED, By the Court that the motion be, and it is hereby, granted, this 6th day of November, 1950.

ALEXANDER HOLTZOFF,
Judge

No. 4

Motion for Mandatory Preliminary and Final Injunction

Comes now the City of Los Angeles and Leland S. Warburton, Lloyd G. Davies, J. Win Austin, Harold A. Henry,

George P. Cronk, L. E. Timberlake, Don A. Allen, Ed. J. Davenport, Ernest E. Debs and John C. Holland, Complainants in Intervention herein, and move the Court for an order granting a mandatory preliminary and final injunction against Defendant Tighe E. Woods requiring said Defendant to comply with Section 204(j)(3) of the Housing and Rent Act of 1950 by signing an order decontrolling rents in Los Angeles, California, based upon the resolution set forth in the Complaint herein.

Respectfully submitted,

RAY L. CHESEBRO, *City Attorney of the City of Los Angeles*

ARTHUR W. NORDSTROM, *Assistant City Attorney*

BOURKE JONES, *Assistant City Attorney*

JAMES A. DOHERTY, *Deputy City Attorney*

By

CHARLES S. RHYNE,
730 Jackson Place, N. W.
Washington 6, D. C.

Attorneys for Plaintiffs in Intervention

No. 5

Motion (of Defendant Tighe E. Woods) to Dismiss Complaint for Mandatory Injunction

Comes now defendant in this cause, Tighe E. Woods, sued individually and as Expediter of the Office of the Housing Expediter, and moves the Court to dismiss the Complaint for Mandatory Injunction on the following grounds:

1. The applicable statutory provisions (Section 204(j)(3), Housing and Rent Act of 1947, as amended (50 U.S.C.

App. 1881, et seq.) authorize the Housing Expediter to reject a resolution which he finds to be contrary to law.

2. By persuasive judicial opinion, the Housing Expediter's authority under the statute is discretionary, not ministerial.

3. The Complaint fails to state a claim upon which relief may be granted since the Court may not interfere with the exercise of the Housing Expediter's discretion in the premises.

4. Plaintiff has an adequate remedy at law.

5. The Complaint fails to state a proper claim for relief against the Housing Expediter individually, and the action may not be maintained against the Housing Expediter in both his individual and official capacities.

6. For such other reasons as to the Court may appear just and proper.

ED DUPREE,
General Counsel

LEON J. LIBEU,
Assistant General Counsel

BENJAMIN FREIDSON,
Special Litigation Attorney

Office of the Housing Expediter
Washington 25, D. C.

Attorneys for Defendant

No. 6

Order Denying Motion to Dismiss and Granting Mandatory Injunction

AMENDED ORDER

Upon consideration of the Motion of Defendant Tighe E. Woods to dismiss the Complaints filed herein by Frank W. Babcock and the City of Los Angeles, and after having heard oral argument of Counsel for the parties, it is this 10th day of November, 1950

ORDERED, By the Court that said Motion be and the same is hereby denied; and

Upon consideration of the Motions for a Mandatory Injunction and the Stipulation of Facts filed herein, and after having heard oral argument of Counsel for the parties, it is

ORDERED, By the Court that said Motions be and the same are hereby granted, and it is further

ORDERED, That the Defendant Tighe E. Woods, Housing Expediter, shall terminate the provisions of the Housing and Rent Act in the City of Los Angeles, California, under the Resolution set forth in the Stipulation of facts filed herein.

/s/ ALEXANDER HOLTZOFF,
U. S. District Judge

I consent to the form of the Amendment:

BENJAMIN FREIDSON,
Counsel for Housing Expediter, Tighe E. Woods
GORDON L. EAKLE,
Counsel for Frank W. Babcock
CHARLES S. RHYNE,
Counsel for City of Los Angeles

No. 7

Housing Expediter's Letter Rejecting Los Angeles Resolution

October 23, 1950

Harold A. Henry, President
City Council of the City of Los Angeles
City Hall
Los Angeles 12, California

DEAR MR. HENRY:

On August 2, 1950, I received from the City Council of the City of Los Angeles a Resolution advising me that there

no longer exists such a shortage in rental housing accommodations as to require rent control in the City of Los Angeles. Adoption of this Resolution by a majority of the City Council was immediately preceded by a public hearing held on July 28, 1950, pursuant to the provisions of Section 204(j)(3) of the Housing and Rent Act of 1950. As you know, under those provisions of the law, I am required to terminate rent control in an incorporated city upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law and based upon a finding by such governing body reached as the result of a public hearing held after ten days' notice, that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city.

At about the time the Resolution came to me, I also received a report from an impartial observer that several questionable incidents took place in connection with the public hearing. It was stated to me that prior to the hearing, a majority of the members of the City Council had made known their fixed intent to vote for decontrol without regard to the matters which might be brought to their attention at the public hearing; a statement to like effect also was circulated in the Press. I was further informed that attendance at the public hearing was so regulated as to systematically exclude large numbers of tenants in favor of the admittance of landlords to insure an atmosphere hostile to the careful and studied consideration of the question before the Council. It was shocking to learn that those responsible for the government of as large and great a city as Los Angeles would approach a question as far-reaching and critical as decontrol of rents except in the most objective and unbiased manner and with scrupulous regard for the interests of all of the members of the community. However, realizing that the Congress intended that the governing body of each incorporated community determine for itself whether it desired the continued pro-

tection afforded by federal law, and in the absence of a record or transcript of the hearing, I was not disposed to reject the Resolution upon the basis of these seeming irregularities alone.

On August 9, 1950, I received a petition from a group purporting to act in behalf of 300,000 tenant families in the City, requesting that I withhold action on the Resolution until inquiry had been made into certain matters raised in the petition. Among these was the charge that the City Council action was in complete disregard of available and known evidence of an already existing acute shortage of rental housing accommodations, which would be further aggravated by the expected influx of large numbers of aircraft workers. Along with this petition there was filed a copy of the housing survey conducted at the request of your City Council by the Peacock Research Associates. This impartial survey, completed in April, 1950, shows a vacancy factor of 2.6 per cent for all dwelling units in Los Angeles and, in units having monthly rentals up to $57.49, the vacancy factor ranges from 1.4 to 3.5 per cent. These matters, bearing as they do upon the very issue before the City Council, caused me very considerable concern. I felt it my duty as a public officer to take whatever steps my best judgment dictated to guard against decontrol which might result from hasty and uninformed action. Consequently, as soon as my schedule permitted, I came to Los Angeles to confer with the members of your Council in the hope of presenting an informed view of the several aspects of control and decontrol in your City, and to learn at first hand the reasons why the majority of the Council felt that Los Angeles was ready for decontrol. I need not dwell upon the antagonistic attitude evidenced at that time to my appearance and the unwillingness of the Council to meet with me in a spirit of cooperativeness. Since there was no disposition to give this vital subject the consideration it deserved, I announced that the Resolution would be accepted

upon my return to Washington unless it were found that the Council action did not satisfy the requirements of law.

I have since been made fully aware, for the first time, through a recording, of the exact events transpiring at the public hearing and the discussion of the several Councilmen prior to their vote. The testimony presented at the hearing by those favoring decontrol is noteworthy for its almost complete lack of reference to the subject of the existence or non-existence of a housing shortage in Los Angeles. It is fully clear that not a single witness presented real facts to show that a shortage of rental housing did not exist. Moreover, the Councilmen who voiced their intention to vote for decontrol likewise failed to provide a substantial basis, grounded upon fact, for their desire to eliminate federal rent control in the area. In the light of the foregoing matters, it cannot reasonbly be said that the Resolution is based upon findings reached as a result of public hearing, as required by the statute.

I believe that the Housing Expediter is charged with the responsibility of determining whether the requirements of law have been met before a decontrol resolution may be accepted. That is a serious responsibility. Having arrived at the judgment that the Resolution of the City Council of Los Angeles is not based upon findings which could reasonably be reached as the result of the public hearing, I have no alternative but to reject the Resolution.

I regret the need for such action, since any fair doubt in such cases has always been resolved in favor of the communities involved, as the past record of this Office clearly shows. There is no fair doubt here.

Sincerely,

TIGHE E. WOODS,
Housing Expediter

[This letter was presented to the District Court and is a part of the Record in this case.]

No. 8

Official Report of City Council of Los Angeles on Housing Expediter's Report

RE:

COMMUNICATION FROM TIGHE E. WOODS REJECTING COUNCIL RESOLUTION REGARDING DECONTROL OF RENTS

To the Honorable, the City Council of the City of Los Angeles

GENTLEMEN:

You have requested a report from this office on the communication under date of October 23, 1950, from Tighe E. Woods, Housing Expediter, addressed to Harold A. Henry, President of the City Council of the City of Los Angeles. The Housing Expediter's letter is a refusal to perform his duty, as required by law, to decontrol rental housing in Los Angeles, pursuant to the resolution adopted by your Honorable Body at its meeting of July 28, 1950. That resolution was adopted after a public hearing on the matter of the necessity of further need for the control of rents in the City of Los Angeles, based upon a finding that such control was no longer needed.

This action on the part of the Housing Expediter has created a serious situation affecting the interests and well-being of many property owners and residents in the City of Los Angeles. In fact, his action has a direct and detrimental impact upon the economics of this community. As a result, your Honorable Body, as the determining agency of the Congress of the United States in carrying out its express declaration "that it is its purpose to terminate at the earliest practicable date all Federal restrictions on the rent on housing," has met an impasse created by the arbitrary and unprecedented action of the Housing Expediter.

The critical problem now confronting your Honorable Body is the accomplishment of the purposes and objects

of the Congress with the minimum of delay. It is strange that the title to the office occupied by Mr. Tighe E. Woods should use the word "Expediter" while the burden of expediting decontrol now falls upon the City Council.

The communication is nothing short of a futile attempt to cover the dereliction of the Housing Expediter by false accusations challenging the integrity of the Council which are admittedly based solely upon extraneous and hearsay information. To do more than point out a few of the inconsistencies and "double talk" of the Housing Expediter would extend this report to undue lengths—therefore only the more glaring features of the Housing Expediter's present position will be mentioned.

The Housing Expediter states in his communication that:

> "Having arrived at the judgment that the Resolution of the City Council of Los Angeles is not based upon findings which could reasonably be reached as the result of the public hearing, I have no alternative but to reject the Resolution."

Even if it be assumed, merely for the sake of argument, that the Housing Expediter has the right to exercise any "judgment" in the matter of whether the findings in question could have been reached reasonably as the result of the public hearing held by the Council, the position taken by the Housing Expediter, as disclosed for the first time by this communication, is to say the least novel and lacking in judicial or administrative precedent.

The Housing Expediter has gone beyond all accepted concepts of judicial or administrative practice and has introduced a new type of administrative procedure, namely, review by rumor.

The communication states that the Expediter "Received a report from an impartial observer that several questionable incidents took place in connection with the public hearing," and that, "it was stated to me that prior to the hear-

ing, a majority of the members of the City Council had made known their fixed intent to vote for decontrol without regard to the matters which might be brought to their attention at the public hearing," that, "a statement to like effect also was circulated in the Press," that he was "further informed that attendance at the public hearing was so regulated as to systematically exclude large numbers of tenants in favor of admittance of landlords to insure an atmosphere hostile to the careful and studied consideration of the question before the Council," and that he has "since been made fully aware for the first time through a recording of the exact events which transpired at the public hearing and the discussion of the several councilmen, prior to their vote," and that, "the testimony presented at the hearing by those favoring decontrol is noteworthy for its almost complete lack of relevance to the subject of the existence or non-existence of the housing shortage in Los Angeles." These and other statements of a similar nature indicate that the Housing Expediter has attempted to pass upon the validity of the proceedings before the City Council without even first attempting to secure a record of such proceedings authenticated either by the President of the City Council, or the clerk thereof.

Whenever one officer or board reviews the actions of another officer or board where a hearing has been held in a matter, it is the uniform practice to secure a record of the proceedings duly authenticated by the officer or board conducting the hearing. If any question arises as to the correctness of such a duly authenticated record, the universal practice is to refer the matter back to the hearing officer or board for correction of the record, so that it may speak the truth.

The Housing Expediter in this case has not requested an authenticated record, apparently, because his office is fully aware that such a record would disclose the falsity of the information on which he bases his communication and places reliance.

As to the Housing Expediter's statement that it was stated to him that prior to the hearing a majority of the members of the City Council had made known their fixed intent to vote for decontrol, an affidavit signed by Councilmen Davenport, Allen, Holland, Davies, Warburton, Timberlake, Henry, Austin, Cronk, and Debs, subscribed and sworn to before a notary public, on August 21, 1950, stated:

> "That prior to the public hearing conducted on July 28, 1950, in the Council Chambers in the matter of rent decontrol, he did not determine to vote for decontrol without and prior to a public hearing on said matter, and that he was not influenced by persons, matters, or things to vote for decontrol without and prior to the holding of a public hearing on the matter."

This affidavit was filed in the case of Maxwell Miller vs. Tighe E. Woods, and a copy thereof served upon the attorneys of record for Mr. Tighe Woods.

With regard to the statement of the Housing Expediter that he was further informed that attendance at the public hearing was so regulated as to systematically exclude large numbers of tenants in favor of the admittance of landlords to insure an atmosphere hostile to the careful and studied consideration of the question before the council, the affidavit of Charles L. Williams, Sgt. at Arms of the Council, was likewise filed in the case previously mentioned, and it is averred in that affidavit:

> "that at the meeting of the Council, held on July 28, 1950, no person or persons was or were excluded systematically, or otherwise, from the Council Chambers, until such time as the Council Chambers were filled to capacity, whereupon no further persons were permitted inside the Council Chambers; that loud-speakers were in operation so that the proceedings of the Council at said meeting could be heard by persons outside the Council Chambers; that said Council Chambers have

a seating capacity of approximately 380 persons, and that there were present in said Council Chambers at the said meeting approximately 455 persons."

The Housing Expediter chooses to ignore these affidavits and rely on asserted information of a hearsay nature, the source of which he does not disclose. It is interesting to note that the language used by the Housing Expediter in making these charges is identical with the allegations found in the papers filed in the case of *Miller* v. *Woods*.

The Housing Expediter refers to, "a petition from a group purporting to act on behalf of 300,000 tenant families in the City, requesting that I withhold action on the Resolution until inquiry had been made in the certain matters raised in the petition." The Housing Expediter states that, "among these was the charge that the City Council action was in complete disregard of available and known evidence of an already existing shortage of rental housing accommodations, which would be further aggravated by the expected influx of large numbers of aircraft workers."

Reference is made to a copy of the housing survey conducted at the request of the City Council by the Peacock Research Associates. The Housing Expediter further states, "this impartial survey, completed in April, 1950, shows a vacancy factor of 2.6 per cent for all dwelling units in Los Angeles and, in units having monthly rentals up to $57.49, the vacancy factor ranges from 1.4 to 3.5 per cent." What he neglected to point out is that in the rental bracket between $57.50 and $64.99, the vacancy factor shown by the report is 5.4 per cent. From the Peacock report, it can be determined that the vacancy factor, based on total rental housing accommodations, is slightly in excess of 4.5 per cent. Be that as it may, the Housing Expediter states in his communication that, "I felt it my duty as a public officer to take whatever steps my best judgment dictated to guard against decontrol which might result from hasty and uninformed action." As the Council well knows, the hous-

ing survey, conducted at the request of the City Council by the Peacock Research Associates, was at the sole expense of the City and was, in the language of the Housing Expediter, "an impartial survey."

By reason of the shortness of time, this office is unable to furnish the Council with specific figures relating to vacancy factors in the various communities in the County of Los Angeles, as well as the vacancy factor in the unincorporated area of the County which have been decontrolled. It is to be noted that the Housing Expediter makes no claim that the vacancy factor in those communities or in the unincorporated area of the county was greater than that shown to exist in the City of Los Angeles by the Peacock Report which was before the City Council and is part of the file in this rent decontrol matter.

An examination of the council file in the matter shows many communications upon the subject. Attention is called to a statement of Mr. G. G. Bauman, President of the Small Property Owner's League, in which he has detailed facts relating to housing conditions in the City of Los Angeles based upon the Peacock Report, which conclusively refutes the statement made by the Housing Expediter that, "It is fully clear that not a single witness presented real facts to show that a shortage of rental housing did not exist."

In short, it is clear that the Housing Expediter is attempting to substitute his judgment as to what he believes should be done, for that of the City Council. The Housing Expediter, in so determining, has resorted to information which does not appear to be a part of any record made before the Council in this matter. This is particularly true as to his statement that, "in the light of the foregoing matters, it cannot reasonably be said that the Resolution is based upon findings reached as a result of a public hearing as required by the statute."

The minutes of the Council disclose, as your Honorable Body well remembers, that an extensive hearing was held in the matter. Each side was allotted 45 minutes to present their side of the question, and an additional fifteen minutes

were allotted to each side for rebuttal. As a matter of fact, the hearing extended well beyond the allotted time.

It will be recalled that no complaint was made at that time that the members of the Public were not given an opportunity to be fully heard in the matter, or that any request for further time was made. That the hearing was fair and impartial is, of course, best known to the members of your Honorable Body.

After referring to his visit to Los Angeles and his appearance before the Council, the Housing Expediter states, "I have since been made fully aware, for the first time, through a recording, of the exact events transpiring at the public hearing and the discussion of several councilmen prior to their vote." Neither the Council nor the clerk has ever authenticated the correctness of any transcription made at the hearing, nor has the Council or the clerk been requested to determine whether or not such transcription, if it was made, is a full and complete transcript of the hearing in question. The attention of this office has been called to the existence of a transcription apparently made for news release purposes, which is purported to contain a portion of the hearing before the Council. However, the City Attorney's office has been unable to secure this recording. Consequently, it is impossible to comment upon the contents thereof. Of course, it is impossible to determine from the Housing Expediter's communication what transcription he listened to. Needless to repeat, whatever the transcription the Housing Expediter listened to, its correctness was not authenticated by either the Council or the City Clerk.

The statements and insinuations made in the communication from the Housing Expediter are utterly without foundation. The reasons he now assigns for refusing to act in the matter appear to indicate a studied intent to avoid compliance with the law relating to the decontrol of rents, at least, as applied to the City of Los Angeles. In the brief filed by the Housing Expediter, as Appellee in the case of *Maxwell Miller* v. *Tighe E. Woods*, wherein,

over the signature of Ed. Dupree, General Counsel; Leon J. Libeu, Assistant General Counsel; Nathan Siegel, and Benjamin Freidson, Special Litigation Attorneys, Office of the Housing Expediter, it is stated that, "to the extent that Appellants may be urging that in some manner not explained, the Housing Expediter must determine whether the findings fairly flow from the evidence adduced at the public hearing. The Housing Expediter is in sharp disagreement with such a view. The Statute does not contemplate that a record of the proceedings be furnished, and none has been or presumably would be transmitted to him. When the Resolution plainly sets forth that the required findings have been made and were reached as a result of a public hearing, further inquiry is not required."

While a Mandatory Injunction seeking to compel the Housing Expediter to comply with the law as his counsel has heretofore represented it to be before the court might be sought, it is doubtful if any practical purpose can be served in view of the length of time that would be consumed in securing a final judgment.

There are two possible non-judicial courses of action that may be of some practical benefit.

Possible, the action of the Housing Expediter in this matter may be the proper subject for investigation by the Attorney General of the United States as to whether there has been wilful or corrupt misconduct on the part of a federal official that impairs the administration of a federal statute.

It might be that more effective results could be obtained if the matter were to be directly laid before the President of the United States himself. He is the Chief Executive and has the power of appointment and removal of the Housing Expediter. It must be remembered that federal control of rents is part of the emergency powers conferred upon the President. These emergency powers, as originally conferred in 1942 and continued presently by the Housing and Rent Act of 1947, have been curtailed by the Housing and Rent Act of 1950. The latter statute specifically

confers upon the local governing body of the City the power to take the very action which the Council took in this matter. Clearly, this statute is being deliberately violated by the Housing Expediter.

A third possibility is a congressional investigation. This course of action would be directed more to the question of whether amendment to the existing statutes is desirable so as to prevent a further repetition of this type of incident rather than applying corrective measures under existing law.

Of course, another public hearing could be had but there is no assurance that, notwithstanding whatever evidence may be adduced, the Housing Expediter would accord a second Resolution any different treatment than that given the current Resolution.

Very truly yours,
RAY L. CHESEBRO, *City Attorney*
By
BOURKE JONES,
Assistant City Attorney

BJ:an
10-26-50

[This report was officially adopted by the City Council on October 27, 1950, and presented to the District Court and is part of the Record in this case.]

No. 9

Official Minutes and Examples of Statements to City Council of Los Angeles at Public Hearing on July 28, 1950 Containing Facts on Absence of Rental Housing Shortage*

EXHIBIT 3

Friday—July 28, 1950

† value, as requested by the County in their letter of May 1, 1950. Therefore, additional funds are required to complete the purchase of tax-title interest in subject parcels.

* From Record in *Miller* v. *Woods* this Courts No. 10764.
† This is where the part of the minutes filed in Court begins.

Your Committee concurs in the recommendation of the Mayor that the tax-deeded land program be tapered off and terminated. However, it is of the opinion that the parcels covered by this file should be included in the present program, and therefore RECOMMENDS as follows:

1. That Council action of November 28, 1949 as contained in Council File No. 40219 be rescinded.

2. That the Council approve the accompanying agreement, and that the President of the Council be authorized to execute 9 copies thereof in behalf of the City.

3. That the City Clerk be instructed to return to said Bureau 9 copies of Council action authorizing said execution.

4. That the Chief Accountant, Board of Public Works, be authorized and instructed, upon request of the Director, Bureau of Right of Way and Land, to draw the necessary demand for an amount not to exceed $14,610 on the Tax-deeded Property Trust Fund for the purchase of the tax-title interest in and to said property.

5. That the Director, Bureau of Right of Way and Land be authorized and instructed to acquire the option and purchase the tax-deeded interest in and to said 75 parcels of land, for resale to the public, in accordance with the provisions of Ordinance 89610, as amended.

Mr. Holland moved, seconded by Mr. Austin, that the rules be suspended and that the report as read be adopted.

Which motion was adopted by the following vote: Ayes, Messrs. Allen, Austin, Bennett, Cronk, Davenport, Debs, Hahn, Holland, Moore, Roybal, Timberlake, Warburton and President Henry (13); Noes, none.

(Said Agreement is No. 18407 of Contracts.)

No. 40909

This being the time set for a public hearing to hear both sides of the proposal to consider decontrol of rents in the City of Los Angeles, in accordance with the Housing and Rental Act of 1950, the matter was taken up.

The Clerk stated that the public notice required by law had been duly published.

The President asked the pleasure of the Council as to the conduct of said public hearing, whereupon Mr. Davenport moved, seconded by Mr. Allen, that 45 minutes be allotted to persons in the audience to present each side of the question and that an additional 15 minutes be allotted to each side for rebuttal.

Which motion was adopted by a unanimous vote.

The President suggested that speakers be not interrupted by members of the Council and that Councilmen withhold their questioning until the conclusion of the hearing, and if that was agreeable, he suggested that an official motion be adopted to that effect.

Whereupon Mr. Austin moved, seconded by Mr. Timberlake, that it be the sense of this Council that members of the public speaking on the question of decontrol of rents be not interrupted by members of the Council.

Which motion was adopted by a unanimous vote.

Councilman Davies entered the Council Chamber and took his seat.

The President stated that the Council would first hear from those in favor of decontrol of rents.

Whereupon Mr. G. Baumen, President of the Small Property Owners League, addressed the Council, quoting from the Federal law—Housing and Rent Act—and stated that the vacancy factor as reported in the Peacock Survey, shows a percentage of 4.5%. He quoted statistics on new housing constructed and stated that increased wages for labor had increased the cost of repairs and construction to landlords; that seventy per cent of the cities in Los Angeles County have decontrolled, and there is a surplus of accommodations available, and in his opinion the Korean war situation does not affect the problem.

Mr. James L. Beebe, Chairman of the Local Government

Committee of the Los Angeles Chamber of Commerce, stated that accommodations are available and no shortage now exists. He said that owners of property depending upon income from residential units have a fixed income, and while expenses have increased, income from rents have been controlled and landlords are now entitled to have rents decontrolled. If a National emergency requires controls at a later date it should be based upon conditions existing at that time.

Mr. James M. Udall, President of the Los Angeles Realty Board, agreed with the previous speakers, and stated that landlords should be given some relief.

Mr. Henry G. Beaumont, Director of the Apartment House Association, stated there are many vacancies and they are increasing daily, which justifies decontrol.

Mr. C. A. Owen, Chairman, Los Angeles Citizens Fair Rent Committee, stated that he has owned apartment houses but was forced to dispose of some owing to the low rentals received; that only a small segment of our economic life is now under control, and these rent controls should be removed. At the conclusion of his talk Mr. Owen filed with the Clerk a petition, alleged to contain seventeen thousand signatures, for rent decontrol.

Mr. Marshall Stimson, Attorney, stated that he spoke in behalf of a small property owner who had been denied a fair return on his investment in income property. He stated that rents should be decontrolled.

Mr. William A. Pixley, Chairman of the Board of Directors, Property Owners Association, stated that controls are very un-American and represent a dictatorship, and they affect only one segment of citizens who suffer for the benefit of others.

Mr. H. V. Shirley, Chairman of the Executive Committee, California State Apartment Conference, spoke on conditions at Long Beach, stated there are many vacancies in that city, and filed with the Clerk original letters from Mr. C. E. Scott, President of the Long Beach Chamber of Com-

merce, Mr. Samuel E. Vickers, City Manager of Long Beach, and A. L. Parmley, Vice-Mayor of Long Beach, showing that Long Beach had suffered no economic effect since rents had been decontrolled.

Mr. Pat O'Donovan stated that in the Cities of Pasadena and Glendale no hardships had been experienced by tenants since rentals had been decontrolled in said cities.

Mr. E. D. Owen, Vice-President of the Small Property Owners League, thereupon introduced Mr. E. D. Mitchell, President of the Westside branch of the Small Property Owners League, who stated that people in his area want the liberty of action guaranteed by the Constitution, and that the small property owners need relief.

Mr. F. T. Hartge, a citizen, stated that he owned income property under lease, that he was required to pay out $3,000.00 yearly and only received $2,000.00 income.

Mr. L. Druitt stated that he had rented property at $60.00 per month, which was quite agreeable to the tenant, and shortly thereafter was notified by the OPA that said rent must be reduced to $32.50.

This concluded the case to be presented by those in favor of decontrol of rents.

Whereupon Mr. Maxwell Miller stated that the rent survey made under instructions of the Council showed a rental vacancy of 2.6%, which indicates that there is a shortage, and the Korean situation has aggravated the condition; the President and Congress have asked the people to prevent inflation, and for the reason that Los Angeles is a defense area the time is not ripe to permit decontrol.

Mr. L. Donovan, of the American Federation of Labor, Los Angeles Central Labor Council, stated that there is a Government agency available which will adjust rents if inequities can be shown, and that to decontrol at this time would likely result in a chaotic condition. He referred to the Peacock report to show there are no surplus housing units available.

Mr. Rex Mainard, of the CIO, stated that decontrol is

not in the best interest of the American people, especially in view of the Korean situation, and that the vacancy factor does not warrant decontrol. He stated many people are coming to Los Angeles expecting work in the aircraft factories, which will require more housing units to be available.

Mr. Carl A. Anderson, a citizen, stated that the Korean situation is serious and the future is unknown and he suggested that the Council postpone action as many persons have left Los Angeles because of the war scare and will undoubtedly return and the matter should therefore be continued until later in the year.

Mr. E. M. Skagen, representing the International Association of Machinists of the Los Angeles area, stated that more employees are being employed by the aircraft companies; that 170,000 workers are needed here, and labor is short in war industry establishments, and that aircraft workers cannot pay high rentals.

E. J. Robinson, M.D., stated he represented minority groups who are poor people and they cannot pay high rents. If controls are removed it will result in these people occupying some substandard buildings which will result in disease and unhealthy conditions.

Mr. Stephen Valensi, of the American Veterans Committee, stated that the Council must protect the families of of veterans who are called into the armed forces.

Captain I. Y. Dannenberg, Commanding Officer of the Long Beach Naval Station, thereupon addressed the Council. Councilman Davenport raised the question as to whether he was speaking officially or as an individual. Captain Dannenberg stated that he was speaking as an individual and officially and also in behalf of officers of the three armed services. He stated that he would confine himself to a statement of facts and would not make conclusions. He attended the meeting with the knowledge and consent of the Secretary of the Navy. He stated that enlisted men cannot pay high rentals and quoted rates of pay in the

Navy to substantiate this statement. He said that enlisted men now pay from $50 to $75 per month, which is too high, and not in conformance with the usual 20% of an enlisted man's income. Navy personnel will likely increase in the Los Angeles area and they must be accommodated, and he recommended that control be not removed.

Mr. Ben C. Koepke, Area Rent Director, thereupon addressed the Council and explained the workings of his office in handling rental matters, stating that 37,000 units have been granted increased rents on an average of $7.33 each. He believed that this is not the time to decontrol as landlords can secure relief upon proper showing.

Mr. James P. Garfield, representing 7,000 blind people, stated that landlords can secure relief through the government agency.

Mr. Leon A. Clifton, representing 15,000 members of the Retail Clerks Union, stated that decontrol in adjoining cities has resulted in increased rentals and that small property owners must be protected.

This concluded the speakers in opposition to decontrol.

The President stated that in accordance with Council action, 15 minutes would be allocated for rebuttal to those in favor of decontrol, whereupon Mr. James Udall, a previous speaker, quoted rates paid to labor and increases in wages. He called attention to the fact that the major air companies are not located in Los Angeles. He said that while rents are up an average of 19% in the neighborhood of Los Angeles, the base Navy pay has also increased.

Mr. H. G. Beaumont, a previous speaker, stated the control law is unjust and to permit repair to properties, controls must be removed.

Mr. La Sage, of the Wage Earners Committee, stated that controls are communistic and would eventually lead to a police state.

Mr. Bauman again addressed the Council in favor of decontrol.

Mr. Druitt stated that Mr. Koepke's office has only three

inspectors for this area, which cannot possibly service the locality in providing adjustment of rentals, only in a very general way.

Mr. Donovan, of the A.F.L., then introduced Maxwell Miller who criticized the operation of Mr. Koepke's office.

Captain Dannenberg again addressed the Council, stating that while base pay had been advanced, changes had been made in allotments which offset it.

A Mr. Mackewitz, of the Americans for Democratic Action, thereupon addressed the Council in opposition to decontrol, as did a Mr. Charles Pursell, who stated he represented 4,000 tenants who cannot pay increased rents unless wages are also increased. These gentlemen stated that the tenants did not have the opportunity of presenting a rent survey.

Mr. Nat Schneider, V. F. W. Post 1556, stated that his group is opposed to decontrol and that it would adversely affect persons in the low income brackets.

Mrs. Ethel Bryant, of the 62nd Assembly District A.F.L. Voters League, invited members of the Council to check as to existing vacancies, and a Mr. Palmer, of the International Association of Machinists, stated that some compromise must be reached to permit low income workers to live in Los Angeles if decontrol is granted.

Mr. Donovan again addressed the Council, quoting increases granted by Mr. Koepke's office.

This concluded the public meeting.

The President thereupon recognized Councilman Cronk who stated that he believed it is time we got back to American Principles and recognized private enterprise instead of socialism and he thereupon moved, seconded by Mr. Davenport that the City Attorney be instructed to prepare and present to this Council forthwith a resolution in accordance with the Housing and Rental Act of 1950, finding that there no longer exists such a shortage in rental housing accommodations as to require rent control in the City of Los

Angeles. Thereupon comments at length were made by Councilmen Davenport, Roybal, Davies, Debs, Allen, and Bennett and at the conclusion thereof the President instructed the Clerk to call the roll upon the pending motion and upon calling the roll, the members voted as follows: Ayes, Messrs. Allen, Austin, Cronk, Davenport, Davies, Debs, Holland, Timberlake, Warburton and President Henry (10); Noes, Messrs. Bennett, Hahn, Moore and Roybal (4).

The President declared the motion adopted.

The President stated that inasmuch as the motion just adopted called for presentation of a resolution forthwith, the Attorney was preparing same and it would be ready for Council consideration in about 10 minutes and requested the desires of the Council.

There being no objection, the President stated that the matter would be laid upon the table pending receipt of resolution from the City Attorney and in the meantime the Council would consider the Committee reports called special earlier in the session.

No. 43954

The Finance Committee reported as follows:

In the matter of communication from the Chief Clerk, County Board of Supervisors, advising that it adopted a resolution on July 5, 1950, making available the amount of $10,000 for the control and eradication of noxious weeds along streets and highways in the San Fernando Valley area of the City of Los Angeles:

We *Recommend* that said appropriation be accepted and that the Board of Public Works, the City Engineer, and the City Controller be advised accordingly and thereafter said communication be filed.

Mr. Holland moved, seconded by Mr. Austin, that the report as read be adopted.

Which motion was adopted by the following vote: Ayes,

Messrs. Allen, Austin, Bennett, Cronk, Davenport, Davies, Debs, Hahn, Holland, Moore, Roybal, Timberlake, Warburton and President Henry (14); Noes, none.

At the hour of 1:55 P. M., President Henry called Councilman Timberlake to the Chair and left the Council Chamber.

No. 43670

The Planning and Building and Safety Committees reported jointly, as follows:

In the matter of resolution of Councilman Davies resolving that Section 12.14-A-6 of the Municipal Code be amended to provide regulations for the operation of automatic automobile laundries (auto wash racks):

Inasmuch as this matter is being considered under File No. 42879, your Committees *Recommend* that said resolution be filed.

Mr. Debs moved, seconded by Mr. Austin, that the report as read be adopted.

Which motion was adopted by a unanimous vote.

No. 43049

The Industry and Transportation Committee reported as follows:

The State Public Utilities Commission acknowledge receipt of copy of Council Resolution of May 3, 1950, requesting that the State Public Utilities Commission adhere to the equitable principle adopted by it in fixing rates on an area basis in determining the pending application of the Pacific Telephone and Telegraph Company.

Inasmuch as the State Public Utilities Commission advises that the date of hearing on said Company's application has not been set and the City will be notified of said date, *We Recommend* the matter be received and filed.

Mr. Timberlake moved, seconded by Mr. Cronk, that said report as read be adopted.

Mr. Moore moved, as a substitute motion, that the Council reaffirm its action of May 3, 1950, in adopting the at-

tached resolution, and that a copy of said resolution be forwarded to the State Board of Public Utilities, with the request that the State Board adhere to the principle of fixing rates for telephone service on an area basis rather than on a district basis, thus saving the people fourteen millions of dollars.

Which substitute motion, being duly seconded by Mr. Timberlake, was adopted by the following vote: Ayes, Messrs. Allen, Austin, Bennett, Cronk, Davenport, Davies, Debs, Hahn, Holland, Moore, Roybal, Timberlake and Warburton (13); Noes, none.

(For the text of said resolution see Council minutes of May 3, 1950.)

No. 39524

The Public Works Committee reported as follows:

The City Engineer transmits for adoption resolution instructing him to present official report as required by the Streets and Highways Code covering the proposed improvement of the alley north of Wilshire Boulevard from Amherst Avenue to Wellesley Avenue by grading and by the construction of concrete pavement, asphalt concrete pavement, concrete curb, gutter and sidewalk. He also transmits map in duplicate showing in general the nature, location and extent of the proposed improvement and the district to be assessed.

We *Recommend* that said resolution be adopted and map approved, one copy of map to be delivered to the City Clerk, the duplicate to be returned to the City Engineer for further use.

Mr. Warburton moved, seconded by Mr. Holland, that the report as read be adopted.

Which motion was adopted by a unanimous vote.

Mr. Warburton presented the following resolution and moved its adoption:

WHEREAS, This Council has considered the proposed improvement of the Alley North of Wilshire Boulevard from Amherst Avenue to Wellesley Avenue, by grading and by

the construction of concrete pavement, asphalt concrete pavement, concrete curb, concrete gutter and concrete sidewalk, therefore, be it

Resolved, That this Council does hereby determine, in accordance with the provisions of Division 4, Streets and Highways Code of California, that the nature, location and extent of the proposed improvement and the extent of the district to be assessed to pay the cost thereof, are as shown on maps, plans, and specifications on file in the office of the City Clerk, and open to public inspection, and be it further

Resolved, That said proceedings shall be carried forward under the provisions of Division 7 of said Code; and that no allocation is proposed to be paid toward the cost of said improvement from any source other than special assessments upon benefited property, and be it further

Resolved, That the City Engineer be, and he is hereby instructed to prepare and submit to this Council the map and report as required by Section 2825 of said Code.

Which motion being duly seconded by Mr. Holland, said resolution was adopted by the following vote: Ayes, Messrs. Allen, Austin, Bennett, Cronk, Davenport, Davies, Debs, Hahn, Holland, Moore, Roybal, Timberlake and Warburton (13); Noes, none.

President Henry entered the Council Chamber and took the Chair, and Councilman Timberlake resumed his seat on the floor of the Council.

No. 40909

The Clerk stated that the City Attorney had placed upon the desk a communication and resolution relative to rent decontrol.

The President instructed the Clerk to read said communication as follows:

Pursuant to your instruction, we have prepared and transmit herewith, approved as to form and legality, draft of a resolution in accordance with applicable local law incorporating a finding that there no longer exists such a

shortage in rental housing accommodations as to require rent control in the City of Los Angeles pursuant to the provisions of the Housing and Rent Act of 1950.

The Clerk thereupon read resolution presented by the City Attorney as follows:

WHEREAS, Upon and pursuant to notice duly given, a public hearing was conducted by the Council on July 28, 1950, for the purpose of determining whether there exists such a shortage of rental housing accommodations as to require the continuation of rent control in the City of Los Angeles. Now therefore, be it

Resolved, That the City Council, as a result of the aforesaid public hearing, finds that there no longer exists such a shortage in rental housing accommodations as to require rent control in the City of Los Angeles, County of Los Angeles, State of California.

The aforesaid proceedings were duly had and taken pursuant to the Housing and Rent Act of 1950, (Public Law 574—81st Congress—Chapter 354—2nd Session). Be it further

Resolved, That the Clerk be, and he is, hereby directed to certify to the adoption of the foregoing resolution, and that the same was adopted in accordance with local law; and forward a copy thereof, so certified, to the Housing Expediter, Washington, D. C.

After discussion, Councilman Bennett moved, seconded by Mr. Roybal that said resolution be amended by inserting the words "on December 1, 1950" in the last line of said resolution after the words "so certified," making the last pargaraph of said resolution read as follows:

"*Be It Further Resolved*, That the Clerk be, and he is, hereby directed to certify to the adoption of the foregoing resolution, and that the same was adopted in accordance with local law; and forward a copy thereof, so certified, on December 1, 1950, to the Housing Expediter, Washington, D. C." which motion was seconded by Councilman Roybal and upon calling the roll the members voted as fol-

lows: Ayes, Messrs. Bennett, Hahn, Moore and Roybal (4); Noes, Messrs. Allen, Austin, Cronk, Davenport, Davies, Debs, Holland, Timberlake, Warburton and President Henry (10).

The President stated the motion to amend resolution failed of adoption.

Thereupon, Councilman Roybal, being recognized by the chair, stated that it was evident the opponents of decontrol were losing the fight to retain controls and asked landlords of the city to be reasonable and not create chaotic and unreasonable conditions, otherwise consideration might be given to restoring controls.

Councilman Bennett concurred in the remarks of Councilman Roybal and at the conclusion thereof, the President instructed the Clerk to call the roll and vote the adoption of resolution as prepared by the City Attorney.

Upon calling the roll, the members voted as follows: Ayes, Messrs. Allen, Austin, Cronk, Davenport, Davies, Debs, Holland, Timberlake, Warburton and President Henry (10); Noes, Messrs. Bennett, Hahn, Moore and Roybal (4).

The President declared the resolution adopted.

Mr. Bennett moved, seconded by Mr. Austin, that the Council do now adjourn.

Which motion was adopted by the following vote: Ayes, Messrs. Allen, Austin, Bennett, Cronk, Davenport, Davies, Debs, Hahn, Holland, Moore, Roybal, Timberlake, Warburton and President Henry (14); Noes, none.

Thereupon the Council did adjourn.

ATTEST:

WALTER C. PETERSON,
City Clerk.

By A. M. MORRIS,
Minute Clerk.

HAROLD A. HENRY,
President of the Council.

CERTIFICATION

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, } ss.

I, WALTER C. PETERSON, *City Clerk of the City of Los Angeles and ex-officio Clerk of the City Council of the City of Los Angeles, do hereby certify and attest the foregoing to be a full, true and correct copy of the original minutes of the Council relating to the public hearing and resolution adopted in the matter of the decontrol of rents, on file in my office, and that I have carefully compared the same with the original.*

IN WITNESS WHEREOF, *I have hereunto set my hand and affixed the Seal of the City of Los Angeles, this 17th day of August, 1950.*

WALTER C. PETERSON,
City Clerk of the City of Los Angeles.

By WALTER C. KLINE,
Deputy.

EXHIBIT NO. 4

Statement by G. G. Baumen, President of the Small Property Owners League, to the Los Angeles City Council on the Decontrol of Rents. July 28, 1950

MR. PRESIDENT, MEMBERS OF THE CITY COUNCIL:

On June 23, 1950, the Congress of the United States adopted public law No. 574 known as the "Housing and Rent Act of 1950." The applicable provisions of Section 204 (j) (3) of that act states:—The Housing Expediter shall terminate the provisions of this title in any incorporated city, town, village, or in the unincorporated area of any county upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law and based upon a finding by such governing body reached as a result of a public hearing held after ten (10)

days notice, that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town, village, or unincorporated area in such county. . . ."

A survey, recently authorized by your honorable body, known as the "Peacock Report," indisputably proves a surplus of housing accommodations exists in this city. It discloses that, at the time of the survey, 16,848 housing units within the boundaries of the city limits, were vacant. In relation to the 322,704 rental units reported in the survey, the vacancy factor is in excess of 5.2%. However, if these units reported for sale only are deducted from the total vacancies we arrive at a percentage in excess of 4.5%. The vacancies reported were in all types of structures, in all rental ranges and in every section of the community. There was a total of 648,000 housing units reported by the Survey, including 308,704 owner occupied units which were not for rent.

It has been pointed out that the 16,848 vacant units is 2.6% of this overall total. However, the Rent Act specifically sets forth that the finding which must be made in order to decontrol a city is as to "rental housing accommodations." It must, therefore, follow that applying the required formula set down by the Congress in the Housing and Rent Act that only those units which are "rental housing accommodations" can be considered and that therefore the true and correct percentage of vacancy factor as disclosed by the Survey in this regard is in excess of 4.5%.

A close study of this report reveals that an additional 23,277 living units would be vacant today if the number of persons occupying each unit were the same today as in 1940. This is the result of the decrease in the number of persons per dwelling unit from 3.05, as recorded by the 1940 census, to 2.83 in 1950, as reported in the Survey.

We will not go into further details of the Peacock Report since each Member of the Council has received a copy for study.

A barometer as accurate as the survey is the Classified Ad Sections of Housing for Rent in the local newspapers. In this connection your attention is directed to the fact that on the fourth Sunday in June of 1940 the Los Angeles *Times* carried a total of ten columns of Housing for Rent in Los Angeles, whereas on the fourth Sunday in June 1950 the *Times* carried ten and one-fifth columns of Housing for Rent.

New construction within the city and in the surrounding communities has added considerably to the number of vacancies reported. The Department of Building and Safety issued a total of 13,240 new dwelling unit permits between January 1, 1950 and June 30, 1950. This figure relates to the city only. Thousands of additional dwelling units are being constructed in virtually every community surrounding the city and due to the freeways places them within a short riding distance of the downtown area. Just a few miles from the City Hall, the Metropolitan Life Insurance Company is finishing a rental project of approximately 1800 units which will be ready for occupancy in the very near future. I refer to Park-La Brea. Many of the units for which permits have been issued are not in the rental field. A large percentage is of the single family type structure built under guarantee by the Federal Housing Administration and the Veteran's Administration. A brief perusal of the daily newspapers, or a tour of the county will disclose that many of these single family homes can be purchased with no down payment and with monthly payments less than $40.00 per month. Surely, even the so-called "low income groups" can find adequate housing in the light of these facts.

It should be pointed out that for every single family structure built in or around the City of Los Angeles, a vacancy is created in rental housing accommodations because the bulk of the purchasers of such homes come, not from the in-migrant, but from the person already residing in the community.

In speaking of construction, it might be appropriate at this time to point out that both labor and materials have increased tremendously since 1942 when rents were frozen and that the owner of controlled rental housing must pay the same wages and prices for repairs and maintenance as the builder or owner of non-controlled housing must pay.

The Building Trades Council of Los Angeles reports that in 1942 a plasterer was paid $1.66 at the time rents were frozen. Today he receives $3.12½ per hour, an increase of 88%. A carpenter received $1.35 per hour in 1942, while in 1950 that same carpenter is paid $2.20 per hour. Painters' wages have increased from $1.25 per hour in 1942 to $2.22 per hour in 1950. And, according to the Building Trades Council, plumbers were paid $1.50 per hour in 1942 and today receive $2.50 per hour.

Similarily, the cost of certain basic building materials have jumped during the same period. The building material dealers report that a gallon of standard brand exterior house paint normally cost $3.65 in 1942. Today, one must pay $5.25 for the same paint—an increase of 44%. The cost of 1,000 board feet of No. 1 Common Lumber was $52.00 in 1942. Today, for the same material you must pay $108.00 With an index figure of 100 for 1940, the cost of construction to the builder in April, 1950, showed an index figure of 230, according to Builders Control Service.

It will be claimed by the opponents of decontrol, that there will be chaos should controls be lifted. In excess of 70% of the incorporated cities in Los Angeles County have already been decontrolled. There has been no chaos in these cities. Opponents speaking against the decontrol of rents in each of these cities made dire predictions at the official public hearings that if the respective city was decontrolled, rents would sky-rocket—that there would be mass evictions—that riots would occur—that labor would strike—and that business in general would suffer a slump due to decreased purchasing power on the part of the ten-

ant. The element of time and happenings since decontrol have proven beyond any question of doubt that such dire claims had no basis of fact or merit. On the contrary, gentlemen, the transition from a controlled to a decontrolled status was accomplished without undue hardships to tenants, or those seeking rental housing. Furthermore, business has been stimulated.

It is reasonable to believe that Los Angeles will experience no different reaction than that of the twenty-nine cities decontrolled, which range in size from Covina, with a population of approximately 4,000, to Long Beach, with a population in excess of 250,000.

Much will be said here today about the Korean situation. However, it should in no way have any bearing on the action you may take here today. At present there is no mass influx of war workers into this area to swell the present population and place a demand on our surplus housing. The local defense plants are hiring men on a small scale from the present unemployed rolls. Until this country goes on an all-out war basis and it becomes necessary for the Congress and the President to invoke wage and price controls on all commodities, rent control should be abolished.

In closing, Mr. President and Members of the Council, may I briefly summarize our position.

(1) The vacancies reported in the "Peacock Report" plus the many thousands of units constructed, and being constructed, prove conclusively the existence of a housing surplus.

(2) Twenty-nine cities already decontrolled in this county, have not had, and are not now having disastrous results due to the decontrol of rents.

(3) The Korean situation is not germane to the issue since we are not now on an all-out war basis.

These facts prove conclusively that there no longer exists a shortage in rental housing accommodations, and

in accordance with the Housing and Rent Act of 1950, I urge each and every member of this City Council to vote in favor of decontrolling rents in the City of Los Angeles.

Mrs. Halley Adams
2132 W. 79th St.
Los Angeles, California

May 19, 1950.

City Council:

Dear Sirs:

As an owner of 40 units (furnished apartments) may I respectfully ask that you give landlords under control some help? The time has gone for landlords to reap the harvest. We have averaged one vacancy at least a month. We wish decontrol from other standpoints than a rent raise. Do please give us back control of our houses with the right to evict nuisance tenants of long standing.

The quickest way to get rents down is competition between landlords.

It would mean many jobs for the very C.I.O. and A.F.L. people who are objecting to decontrol. Most apartments in the city would have to be completely redecorated to get any raise at all.

Our taxes and service charges have skyrocketed since 1941 and it is only just that we be given consideration. The length of time that rent control has been in effect clearly points out how loathe government is willing to give up its grip on private enterprise. The landlords have surely more than done their share by providing housing at below price levels. Don't forget us.

Mrs. Halley Adams,
2132 W. 79th St., L. A.

1112 Echo Park Ave.,
Los Angeles 26, Calif.

Mr. Ernest Debs,
2264 Room 132b

Dear Mr. Debs:

Seeing so much vacancy everywhere in our City, I know it is time for de-control. Can't see where we can't get back to the American way of doing things. Let's de-control our City and give property back to property owner.

De-control means prosperity for all. So please, Let freedom ring!

Yours very truly,

Anna Beckstrom.

July 10, 1950.

Councilmen:

Dear Sirs:

In regard to rent decontrol, we are anxious to hear of your action in our favor soon as we know there are more vacancies than there were at time of survey.

Let's try and see if you will not consider giving back our property as it should be.

Thanking you kindly in advance.

Mr. and Mrs. Geo. J. Du-Gay,
2134 Marathon St., L. A. 26.

HUTCHINSON REALTY CO.
Management—Insurance

Established 1905

1547 Sunset Blvd.,
Los Angeles, Calif.
Telephone Mutual 6992

July 11, 1950

LOS ANGELES CITY COUNCIL,
City Hall,
Los Angeles, California

In Re: **Rent Control**

GENTLEMEN:

It is my understanding that the City Council will shortly be called upon to consider removing Rent Control. Because of present conditions, I want to strongly urge your body to remove these rent restrictions.

At the present time we are having great difficulty in renting vacant units even at ordinary low rents. Very few of the prospective renters are really in need of housing. Anyone that has any contact with or practical experience in rental of income property, knows this is a fact. All the surveys in the world will not change the fact that there are already a surplus of rentals. New rentals at high prices are going begging, therefore, I respectively urge your honorable body to repeal this unfair control act.

Very truly yours,

CHARLES HUTCHINSON.

CBH: hb

4423 Burns Ave.,
Los Angeles,
7-11-50.

Hon. Ed. J. Davenport,
12th District Councilman,
Los Angeles, Calif.

Dear Sir:

I would appreciate rent decontrol because, it is no longer necessary. I own some property and have had quite a few vacancies in the past year, have one now past 30 days.

Will admit my furnishings are not up-to-date. I can't take a chance of refurnishing them with controls on my apartments. There are plenty of vacancies now, with more new apartments being finished, which will hamper us more.

Yours truly,

Wm. Pearlman.

1421 Carroll Avenue,
Los Angeles 26, California,
July 11, 1950.

Los Angeles City Council,
City Hall,
Los Angeles 12, California.

Gentlemen:

I have been paying rent in Los Angeles for more than twenty-five years, and have never during that time found that my payments were excessive. I do not believe rent control has done a thing but stifle improvements and make it increasingly hard for taxpayers. Wages are all up considerably since I came to Los Angeles. We should expect to pay more for rent. Any liberal minded person would be willing to do so without grumbling.

I'm for decontrol, and I believe there are many honest people in this city who feel the same way. At least that has been my observation and information.

Very truly yours,

RAYMOND C. LINTON.

CERTIFICATION

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES, } *ss.*

I, WALTER C. PETERSON, *City Clerk of the City of Los Angeles and ex-officio Clerk of the City Council of the City of Los Angeles, do hereby certify and attest the foregoing to be a full, true and correct copy of the original communications received by the Council and a statement read publicly at the meeting of the Council held on July 28, 1950, and filed in Council File No. 40909, on file in my office, and that I have carefully compared the same with the original.*

IN WITNESS WHEREOF, *I have hereunto set my hand and affixed the Seal of the City of Los Angeles, this 18th day of August, 1950.*

WALTER C. PETERSON,
City Clerk of the City of Los Angeles.

By WALTER C. KLINE,
Deputy.

[fol. 50] EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Honorable James M. Carter, Judge Presiding

No. 12403-C

MARGARET WHEELER HESS and HARRY WESTBERG, individually and as Directors and Members of the Small Property Owners League, a non-profit, unincorporated association, and for an on behalf of each and all of the members of said Association, Plaintiffs,

vs.

TIGHE WOODS, THE HOUSING EXPEDITER OF THE UNITED STATES GOVERNMENT, the Office of the Housing Expediter, Does I to XXX, inclusive, Defendants.

Reporter's Partial Transcript of Proceedings

Los Angeles, California

Friday, October 13, 1950.

APPEARANCES:

For the Plaintiffs: G. C. Baumen, Esq.

For the Defendants: Nathan Siegel, Esq., Frank L. Hirst, Esq., and Benjamin Chapman, Esq.

Amicus Curiae: Austin Clapp, Esq.

[fol. 51] The Court: I am going to decide it on the motion to dismiss.

This is an important matter and it should not be taken under submission unless the court was in doubt, because taking the matter under submission would cause further delay, and I think the matter should be decided as expeditiously as possible, and if there are other remedies that either party wants to pursue, let them pursue them.

Let me say, first, as I told counsel yesterday, that I am a landlord, and I rent three units, I get low rents, and Mr. Koepke refused my application for increases. However, I am laying aside any personal considerations in deciding this issue. I know that there are rents in this city that are too low, and I know that there are rents that are too high;

I know there are tenants who suffer and there are landlords who suffer. I am going to decide this matter aside from any personal considerations and on the law as I see it.

First, as to the purpose of rent controls. There is a lot of talk sometimes, and there was a little bit here today, as if rent control was some vicious device thought up by a pernicious government to oppress its citizens. That is not the case.

I commented in *Denunzio Fruit Co.* v. *Crane*, 89 Fed. Supp. 962, on the purpose of the Emergency Price Control Act, and that same thing that I had to say there applies to rent controls:

> "It must be remembered that the purpose of the Emergency Price Control Act and other wartime legislation affecting prices was to prevent a runaway upward spiral of prices during the war, which would require the government to pay additional sums for the vast amount of commodities it was purchasing to conduct the war, and thereby add to the ultimate cost of the war, and to prevent a great dislocation of the internal economy of the country."

The same is true of price controls. They had a purpose when they were put into effect. The question is, of course, when they should be terminated. That is not, however, the question this court has to decide.

I don't consider the District of Columbia case controlling here at all. It turned off on a question whether there was jurisdiction or whether there wasn't. It is certainly not controlling here.

The plaintiff has conceded that it seeks only injunctive relief, and abandons its prayer under point 1 of the complaint for an injunction. Therefore the court is not required to rule on that. However, the matter having been sent over here from the State Court, and we picking up the State Court case as it comes to us, I think there should be some disposal of that. In view of the attitude of counsel for the plaintiffs, the alternative writ of mandate is therefore vacated and set aside. It can't be left hanging here in our court.

Mr. Baumen: We are not pressing that.

The Court: There remains, therefore, the question as to whether this negative relief, injunctive relief, should be granted.

[fol. 52] This is on a motion to dismiss. I think it is clear that the court lacks jurisdiction over the defendant Tighe Woods, as he does not reside within the jurisdiction of this court and has not been served. He may be sued in the District of Columbia where he resides. He may not be sued here.

The service upon Koepke is not service upon Tighe Woods.

The plaintiffs are not without relief. They may intervene in the District of Columbia where apparently jurisdiction has been obtained over the acting housing expediter. He is in court back there in some suit, so any talk about the Expediter being on the run, can't be found, falls. He is in a court proceeding there, in which, apparently, service may now be made upon him by probably only serving his counsel, since the court has jurisdiction of the acting housing expediter.

Next, I can't say that Tighe Woods is only a glorified push-button, that he doesn't exercise any control, any discretion. The statute says that the Housing Expediter shall terminate the provisions of this title in any incorporated city upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law and based upon a finding by such governing body reached as the result of a public hearing held after ten days' notice, that there no longer exists such a shortage, and so forth.

It seems to me clear that Congress could have eliminated those matters which are now here for discussion. It could have said that the Expediter shall terminate upon receipt of a resolution by the governing body of any city that there no longer exists such shortage in rental housing accommodations.

That the Congress didn't do. They put in certain other provisions there, and it seems to me that the Housing Expediter has to determine whether this was in accordance with applicable local law.

I think Mr. Siegel has made a fairly good point in the matter as to whether this must be an ordinance or a resolution. There are probably different time limits, different

ways in which they are passed. What does "applicable local law" mean? He has to determine whether there was a finding of the governing body, whether it was a result of a public hearing, that it was held after ten days' notice.

If the Housing Expediter's duties were only ministerial, if he was merely a highly paid clerk, then I am of the opinion that equity regards that as done which should have been done, and if, therefore, rent controls ended when the City Council acted, save only for some ministerial act, then I don't think any problem would be presented, and I think that the fact that Mr. Koepke is here before this court, having been served by process, would authorize this court to grant an injunction. I hold, however, that Tighe Woods had discretion to exercise and that he has not exercised it.

The court may compel a man in an official position to exercise his discretion to act, but the court may not compel him to act one way or the other. It may not tell him how to exercise his discretion.

[fol. 53] I am convinced that the Fanning case is a case that is largely determinative of this matter. The headnote very aptly summarizes it. It says:

> "The superior officer is an indispensable party if a decree granting the relief sought will require him to take action, either by exercising directly a power lodged in him or by having a subordinate exercise it for him."

Then it says:

> "The superior officer is not an indispensable party if the decree which is entered would effectively grant the relief desired by expending itself on the subordinate official who is before the court."

That means that if decontrol ended when the City Council acted, without the exercise of discretion by Tighe Woods, then the relief might be expended, to use the language of the Supreme Court, upon Mr. Koepke, and an injunction might be granted restraining Koepke from proceeding with enforcement of the Act on the ground that rent control had ended. But since there was discretion to be exercised by Tighe Woods, the Fanning case is applicable to our problem here.

For the same reason the action is probably premature in that the Expediter has not yet exercised this descretion

one way or the other. The remedy is to sue the Expediter where he can be served and require him to act. The Expediter can be required to act one way or the other. He cannot be required to act in a certain way. That remedy is where the Expediter can be served and where he resides, in the District of Columbia.

As to whether the plaintiffs have any standing to sue in this case, it is moot in view of what I have already indicated. It may be that the Moffat Tunnel case and the Joint Anti-Fascist Refugee case aren't pertinent, in view of our California section that gives some status to an unincorporated association. I don't think that is material. I don't think I have to pass on it, and I don't think I have to pass on whether Hess and Westberg as individuals have a standing in this court.

If the case did not have to be dismissed, I would be inclined to think that Hess and Westberg did have a standing. I think they are probably interested parties, and I am not particularly impressed by the Expediter's point about judicial review. Even if there were no judicial review available, it seems to me a party should have a right to come into court and claim that he is being hurt by what some official has done.

[fol. 54] I have already indicated that the alternative writ should be vacated and set aside. The motion to dismiss as to Tighe Woods is granted, and the further motion to dismiss the action is granted, upon the ground that Tighe Woods is an indispensable party. The action having been dismissed, the application for the temporary injunction will be denied.

The defendant will prepare an order for my signature.

I am going to leave town tomorrow morning. Is there any chance that this order could be signed tonight before I leave? Counsel would like to have it signed as promptly as possible, I take it?

Mr. Siegel: Yes.

Mr. Baumann: Yes.

Mr. Siegel: If your Honor please, we could possibly get somebody to type it up here.

The Court: It shouldn't be a hard thing to prepare, and I would like to sign that order tonight. I will be home. I will give you my address. 3633 Crestmount. My phone number is in the book. I would like to have that order

presented to me tonight so that I may sign it, so there won't be any delay as far as this court is concerned in my decision.

You may not approve of my decision, but I am going to give it to you promptly. I haven't decided this case without some consideration. I had your points, I was familiar with the Fanning case, in fact, we always used to say the government never loses a case, because if we get beat and the citizen wins, the government hasn't lost the case, but I was on the losing side of the case, shall we say, and therefore was familiar with that case from the time it started out before Judge Hall, and, also, I have had the last day or so to look at some of the authorities and the cases, and I read your briefs, and I don't want you to feel that I am making a hasty determination. But I would rather decide it promptly than to have a lot of delay ensue.

We have had instances here in the Federal Court where cases were taken under submission for eighteen months. Within eighteen months an appeal could have been taken and the case decided. It seems to me more important that a judge decide a case, even wrongly, than to wait eighteen months to decide it.

Anything further?

Mr. Baumen: Nothing, Your Honor.

The Court: Court will stand adjourned.

[fol. 55] CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 16th day of October, A. D., 1950.

(S.) Samuel Goldstein, Official Reporter.

[fol. 56] IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 12403-C

MARGARET WHEELER HESS and HARRY WESTBERG, Individually and as Directors and Members of the Small Property Owners League, a non-profit Unincorporated Association, and for and on behalf of each and all of the members of said Association, Plaintiffs,

vs.

TIGHE E. WOODS, THE HOUSING EXPEDITER OF THE UNITED STATES GOVERNMENT, Office of the Housing Expediter, Does I to XXX, Inclusive, Defendant.

DECISION AND ORDER

JAMES M. CARTER, *U. S. District Judge.*

In the above matter, motions heretofore submitted are decided as follows:

(1) Motion of Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, to dismiss the complaint is granted upon the grounds:

(a) That the Court lacks jurisdiction over him because his official residence is in Washington, D. C., and because he does not reside in the State of California.

(b) The authority which the Housing Expediter must exercise under Section 204(j)(3) of the Housing and Rent Act is not of a ministerial character but requires an exercise of discretion which cannot be controlled by Writ of Mandamus or Injunction.

(c) The action is premature.

[fol. 57] (d) Plaintiffs have a remedy in that they may intervene in the pending action brought by tenants against the Housing Expediter in the Municipal Court for the District of Columbia.

(2) Motion to Ben C. Koepke, Area Rent Director, and other defendants, to dismiss the complaint is granted upon the grounds:

(a) That the Housing Expediter is an indispensable party to the action.

(b) The powers exercised by the Housing Expediter under Section 204(j)(3) of the Act are not of a ministerial character.

(c) The action is premature.

(3) The alternative Writ of Mandate heretofore issued by Judge W. Turney Fox of the Superior Court, County of Los Angeles, State of California, is hereby vacated and set aside, and

(4) Plaintiff's application for a preliminary injunction and temporary restraining order is hereby denied.

Dated at Los Angeles, California, this 13th day of October, 1950.

(S.) James M. Carter, United States District Court Judge.

Filed, entered and docketed on October 14, 1950.

[fol. 58] In the United States District Court, Southern District of California, Central Division

No. 12403-C

Margaret Wheeler Hess and Harry Westberg, Individually and as Directors and Members of the Small Property Owners League, a non-profit Unincorporated Association, and for and on behalf of each and all of the members of said Association, Plaintiffs,

vs.

Tighe E. Woods, The Housing Expediter of the United States Government, Office of the Housing Expediter, Does I to XXX, Inclusive, Defendant

Judgment of Dismissal of Complaint and Judgment Vacating Alternative Writ of Mandate of State Court and Judgment Denying Plaintiff's Application for Injunctive Relief

This Court, the Honorable James C. Carter, United States District Judge presiding, having made its decision and order that the motions of Tighe E. Woods, Housing

Expediter, Office of the Housing Expediter, and Ben C. Koepke, Area Rent Director, Office of the Housing Expediter, and other defendants to dismiss the complaint is granted.

Now, Therefore, Judgment is rendered dismissing this action as to all defendants.

The alternative Writ of Mandate heretofore issued by Judge W. Turney Fox of the Superior Court, County of Los Angeles, State of California, is hereby vacated and set aside, and

Plaintiff's application for a preliminary injunction and temporary restraining order is hereby denied.

The Clerk is directed to enter Judgment accordingly.

Dated this 15th day of October, 1950.

(S.) James M. Carter, United States District Court Judge.

Filed, entered and docketed on October 14, 1950.

[fol. 59] EXHIBIT 2

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 12,725

MARGARET WHEELER HESS and HARRY WESTBERG, etc., et al., Appellants,

vs.

TIGHE E. WOODS, The Housing Expediter, etc., et al., Appellees

Nov. 8, 1950.

Motion for Restraining Order and Injunction Pending Hearing of Appeal

Before: Stephens, Bone and Orr, Circuit Judges

PER CURIAM

The District Court denied an application for a temporary injunction against the continuing enforcement of The Housing and Rent Act of 1947, as amended, and dismissed the action under which it was requested. The plaintiffs there-

upon filed their notice of appeal to this court and applied for an immediate "restraining order" and "injunction" against the named defendants and against B. C. Koepke, Area Rent Director, and his subordinates. In short, we are asked to suspend all activity of an important governmental agency before the appeal is before us for adjudication as to whether the District Court should take jurisdiction and try the case on the merits. No order with such far-reaching consequences should be made by any court before the merits of the controversy have been tried and adjudicated.

Petition denied.

[fol. 60]

EXHIBIT 3

Copy

Office of the Housing Expediter

Washington, D. C.

October 23, 1950.

GC-1

Harold A. Henry, President,
City Council of the City of Los Angeles,
City Hall,
Los Angeles 12, California.

DEAR MR. HENRY:

On August 2, 1950, I received from the City Council of the City of Los Angeles a Resolution advising me that there no longer exists such a shortage in rental housing accommodations as to require rent control in the City of Los Angeles. Adoption of this Resolution by a majority of the City Council was immediately preceded by a public hearing held on July 28, 1950, pursuant to the provisions of Section 204(j)(3) of the Housing and Rent Act of 1950. As you know, under those provisions of the law, I am required to terminate rent control in an incorporated city upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law and based upon a finding by such governing body reached as the result of a public hearing held after ten days' notice, that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city.

At about the time the Resolution came to me, I also received a report from an impartial observer that several questionable incidents took place in connection with the public hearing. It was stated to me that prior to the hearing, a majority of the members of the City Council had made known their fixed intent to vote for decontrol without regard to the matters which might be brought to their attention at the public hearing; a statement to like effect also was circulated in the Press. I was further informed that attendance at the public hearing was so regulated as to systematically exclude large numbers of tenants in favor of the admittance of landlords to insure an atmosphere hostile to the careful and studied consideration of the question before the Council. It was shocking to learn that those responsible for the government of as large and great a city as Los Angeles would approach a question as far-reaching and critical as decontrol of rents except in the most objective and unbiased manner and with scrupulous regard for the interests of all of the members of the community. However, realizing that the Congress intended that the governing body of each incorporated community determine for itself whether it desired the continued protection afforded by federal law, and in the absence of a record or transcript of the hearing, I was not disposed to reject the Resolution upon the basis of these seeming irregularities alone.

On August 9, 1950, I received a petition from a group purporting to act in behalf of 300,000 tenant families in the City, requesting that I withhold action on the Resolution until inquiry had been made into certain matters raised in the petition. Among these was the charge that the City [fols. 61-62] Council action was in complete disregard of available and known evidence of an already existing acute shortage of rental housing accommodations, which would be further aggravated by the expected influx of large numbers of aircraft workers. Along with this petition there was filed a copy of the housing survey conducted at the request of your City Council by the Peacock Research Associates. This impartial survey, completed in April 1950, shows a vacancy factor of 2.6 percent for all dwelling units in Los Angeles and, in units having monthly rentals up to $57.49, the vacancy factor ranges from 1.4 to 3.5 percent. These matters, bearing as they do upon the very issue before the City Council, caused me very considerable concern. I felt it my duty as a public officer to take what-

ever steps my best judgment dictated to guard against decontrol which might result from hasty and uninformed action. Consequently, as soon as my schedule permitted, I came to Los Angeles to confer with the members of your Council in the hope of presenting an informed view of the several aspects of control and decontrol in your City, and to learn at first hand the reasons why the majority of the Council felt that Los Angeles was ready for decontrol. I need not dwell upon the antagonistic attitude evidenced at that time to my appearance and the unwillingness of the Council to meet with me in a spirit of cooperativeness. Since there was no disposition to give this vital subject the consideration it deserved, I announced that the Resolution would be accepted upon my return to Washington unless it were found that the Council action did not satisfy the requirements of law.

I have since been made fully aware, for the first time, through a recording, of the exact events transpiring at the public hearing and the discussion of the several Councilmen prior to their vote. The testimony presented at the hearing by those favoring decontrol is noteworthy for its almost complete lack of relevance to the subject of the existence or non-existence of a housing shortage in Los Angeles. It is fully clear that not a single witness presented real facts to show that a shortage of rental housing did not exist. Moreover, the Councilmen who voiced their intention to vote for decontrol likewise failed to provide a substantial basis, grounded upon fact, for their desire to eliminate federal rent control in the area. In the light of the foregoing matters, it cannot reasonably be said that the resolution is based upon findings reached as a result of the public hearing, as required by the statute.

I believe that the Housing Expediter is charged with the responsibility of determining whether the requirements of law have been met before a decontrol resolution may be accepted. That is a serious responsibility. Having arrived at the judgment that the Resolution of the City Council of Los Angeles is not based upon findings which could reasonably be reached as the result of the public hearing, I have no alternative but to reject the Resolution.

I regret the need for such action, since any fair doubt in such cases has always been resolved in favor of the com-

munities involved, as the past record of this Office clearly shows. There is no fair doubt here.

Sincerely, Tighe E. Woods, Housing Expediter.

[fol. 63] EXHIBIT 4

Herbert H. Bent, Austin Clapp, 3780 West Sixth Street, Los Angeles 5, California, Dunkirk 8-2255; Gordon L. Eakle, 1025 Connecticut, Washington, D. C., Executive 1081, Attorneys for Plaintiff.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 4669-50

FRANK W. BABCOCK, Plaintiff,

vs.

TIGHE E. WOODS, Individually and as Expediter of the Office of the Housing Expediter, DOE I and DOE II, Defendants

STIPULATION OF FACTS

Comes now the above-named plaintiff by his attorneys, Herbert H. Bent, Austin Clapp and Gordon L. Eakle, and comes now the above named defendant, Tighe E. Woods, as Expediter of the Office of the Housing Expediter, by his attorney of record, Benjamin Freidson, and said parties hereby stipulate that the following facts are true:

1. That on the 14th day of July, 1950 the City Council of the City of Los Angeles duly published a notice advising the general public that in accordance with Section 204(j)(3) of the Housing and Rent Act of 1947 as amended, the said council would hold a public hearing on the 28th day of July, 1950 to determine whether or not there existed such a shortage in rental housing accommodations in the City of Los Angeles as to require the continuance of Federal Rent Control in the said city.

[fol. 64] 2. That on the 28th day of July, 1950 the City Council of the City of Los Angeles, California held a public hearing in accordance with the notice given on July 14, 1950, which notice is referred to in paragraph 1 above.

3. That on the 28th day of July, 1950 the City Council of the City of Los Angeles adopted a resolution, said resolution being in the words and figures as follows:

"Whereas, upon and pursuant to notice duly given, a public hearing was conducted by the Council on July 28, 1950, for the purpose of determining whether there exists such a shortage of rental housing accommodations as to require the continuation of rent control in the City of Los Angeles.

Now Therefore, Be It Resolved that the City Council, as a result of the aforesaid public hearing finds that there no longer exists such a storage in rental housing accommodations as to require rent control in the City of Los Angeles, County of Los Angeles, State of California.

The aforesaid proceedings were duly had and taken pursuant to the Housing and Rent Act of 1950 (Public Law 574—81st Congress—Chap. 354—2nd session).

Be It Further Resolved that the Clerk be, and he is hereby directed to certify to the adoption of the foregoing resolution, and that the same was adopted in accordance with local law; and forward a copy thereof, so certified, to the Housing Expediter, Washington, D. C.

I hereby certify that the foregoing resolution was adopted by the Council of the City of Los Angeles at its meeting held July 28, 1950.

(S.) Walter C. Peterson, City Clerk, by A. M. Morris, Deputy City Clerk."

[fol. 65] 4. That the defendant, Tighe E. Woods as Housing Expediter received a written copy of the resolution set forth in paragraph 3 on the 2nd day of August, 1950, the same being duly certified by the Clerk of the Los Angeles City Council as being adopted by said council on the 28th day of July, 1950.

October 31, 1950.

Herbert H. Bent, Austin Clapp, and Gordon L. Eakle, By (S.) Herbert H. Bent. Tighe E. Woods, Office of the Housing Expediter, by (S.) Benjamin Freidson, Attorney.

[fol. 66] Wednesday, November 22, 1950

* * * * * * *

No. 10826, October Term 1950

TIGHE E. WOODS, etc., Appellant,

v.

FRANK W. BABCOCK, and the CITY OF LOS ANGELES, et al., Appellees

No. 10827, October Term 1950

MAXWELL MILLER, Individually and as a member and Representative of Los Angeles Tenants Council, etc., Appellant

v.

FRANK W. BABCOCK, and the CITY OF LOS ANGELES, et al., Appellees

Before Honorable Wilbur K. Miller, E. Barrett Prettyman and David J. Bazelon, Circuit Judges

* * * * * * *

On motion of Mr. Gordon L. Eakle, Mr. Herbert H. Bent of the Bar of the Supreme Court of California was permitted to argue for appellees pro hac vice by special leave of Court.

Argument commenced by Mr. Benjamin Friedson for Appellant Woods, continued by Messrs. Hary Maclay for Appellants Miller, et al., Herbert H. Bent for appellees Babcock et al., Charles S. Rhyne for Appellees City of Los Angeles et al., and concluded by Mr. Maclay.

United States Court of Appeals

FOR THE

DISTRICT OF COLUMBIA CIRCUIT

No. 10826

TIGHE E. WOODS, Housing Expediter, Office of the Housing Expediter, APPELLANT

v.

FRANK W. BABCOCK, ET AL., APPELLEES

No. 10827

MAXWELL MILLER, individually and as a member and representative of Los Angeles Tenants Council, etc., APPELLANT

v.

FRANK W. BABCOCK, ET AL., APPELLEES

Appeals from the United States District Court for the District of Columbia

---

Argued November 22, 1950. Decided November 24, 1950.

Mr. Benjamin Freidson, Special Litigation Attorney, Office of the Housing Expediter, for appellant Woods.

Mr. Hardy K. Maclay, with whom *Messrs. Wallace M. Cohen* and *Herbert S. Thatcher* were on the brief, for appellant Miller.

Mr. Herbert H. Bent, of the Bar of the Supreme Court of California, *pro hac vice*, by special leave of Court, with whom *Mr. Gordon L. Eakle* was on the brief, for appellee Babcock.

Mr. Charles S. Rhyne, with whom *Messrs. Eugene J. Bradley, William G. Van Meter, David E. Bamford* and *William F. Wetmore, Jr.*, were on the brief, for appellees City of Los Angeles, et al.

Before WILBUR K. MILLER, PRETTYMAN and BAZELON, Circuit Judges.

PRETTYMAN, Circuit Judge: The District Court entered an order directing the federal Housing Expediter to terminate federal rent control in the City of Los Angeles. The Expediter and the intervenor appeal.

The governing statute[1] reads in pertinent part as follows:

> "The Housing Expediter shall terminate the provisions of this title [sections 1891-1899 of this Appendix] in any incorporated city, town or village upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law and based upon a finding by such governing body reached as the result of a public hearing held after 10 days' notice, that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village: . . . ."[2]

On July 14, 1950, the City Council of Los Angeles, being the governing body of that City, published a notice that a public hearing would be held on July 28, 1950, to determine whether or not there existed such a shortage in rental housing accommodations in the City as to require the continuance of federal rent control. On the specified date a hearing was held, and the Council adopted a resolution which recited a finding that there no longer existed in the City such a shortage in rental housing accommodations as to require rent control. A copy of the resolution was forwarded to the federal Housing Expediter. Thereafter various events transpired which it is unnecessary to recite here, and on October 23, 1950, the Expediter wrote a letter to the City Council rejecting the resolution. Thereupon appellee landlord filed his civil action for a mandatory injunction. A tenant intervened.

The federal statute, from which we have quoted above, requires that the resolution of the governing body of a city pursuant to which the Expediter shall terminate federal rent control, be "adopted for that purpose in accordance with applicable local law". Congress must have meant something by the expression "in accordance with applicable local law". If it had meant that the Expediter should act upon any resolution adopted by a city council, surely it would have said simply that. The noticeable added restriction—"in accordance with applicable local law"—must be accorded meaning.

The Charter of the City of Los Angeles contains the following provisions:

> "Sec. 21. All legislative power of the city except as herein otherwise provided is vested in the Council and shall be exercised by ordinance, ... Other action of the Council may be by order or resolution, upon motion.
>
> . . . . . .
>
> "Sec. 31. All ordinances finally adopted under the provisions of this charter shall be published in the English language by at least one insertion in some daily newspaper printed and published in the City of Los Angeles, or by posting for at least ten days in three public places in said city, and until and without such

[1] A section added in 1949 (Act of March 30, 1949, 63 STAT. 21) to the Housing and Rent Act of 1947 (Act of June 30, 1947, 61 STAT. 193), which now appears as Section 1894(j)(3), Title 50 App. of the United States Code.

[2] The 1949 statute required that resolutions under the Act be approved by the Governor of the state, but that provision was eliminated by the Act of June 23, 1950, Pub. L. No. 574, 81st Cong., 2d Sess.

publication or posting no ordinance shall be valid or take effect.

. . . . . .

"Sec. 281. No ordinance, legislative, administrative or executive, passed by the Council shall go into effect until the expiration of thirty days from its publication, [with immaterial exceptions] . . . .

"Sec. 282. At any time within the thirty days mentioned in the preceding section, a petition addressed to the Council and signed by qualified electors of said city equal in number to at least ten per cent of such qualified electors, . . . may be filed with the City Clerk, demanding the submission of any ordinance, order or resolution passed by the Council, to a vote of the qualified electors of said city, except any ordinance, order or resolution which shall take effect upon its publication or passage as provided in the preceding section. . . . ."

In summary the foregoing charter provisions are that legislative power must be exercised by ordinance, that ordinances must be published or posted, that without publication or posting an ordinance is not valid, that no ordinance shall go into effect until the expiration of thirty days from its publication, and that within the thirty days a petition for referendum may be filed. In still shorter summary: The charter of Los Angeles provides that all legislative action of the City Council is subject to a petition for a referendum and for that purpose must be published or posted and held for thirty days.

The action taken by the Council in the matter before us was neither published nor posted, and it was not withheld from effect for thirty days but was forthwith, upon adoption, forwarded to the Expediter. So, if the action was in the exercise of legislative power, it was not validly taken.

The line between the exercise of legislative power and the exercise of other governmental powers, made critical in the Los Angeles City Charter, is vague in borderline cases, but whatever the boundary of legislative power may be, it clearly includes an action which adopts a policy affecting the public generally and sets in motion the effectuation of that policy.[3] If an action is merely by way of fact-finding in the course of effectuating a policy declared by the legislature, or is merely the formulation of rules and regulations for the purposes of such effectuation, the action is administrative.[4] But if an action is the declaration and adoption of a policy and program by which affairs of general public concern are to be controlled, the action is a legislative act.

The enactment of a rent control law is the exercise of legislative power under any conceivable definition of legislative power. Likewise, the repeal of rent control is unquestionably the exercise of legislative power. If this latter were not true an obstinate city council in Los Angeles could repeal without referendum an act adopted by referendum. The adoption of a resolution which, pursuant to federal

[3] *See* the discussion in COOLEY, CONSTITUTIONAL LIMITATIONS, p. 175 *et seq.* (8th ed. 1927).

[4] Opp Cotton Mills v. Administrator, 312 U.S. 126, 144, 85 L.Ed. 624, 61 S.Ct. 524 (1941); Yakus v. United States, 321 U.S. 414, 88 L.Ed. 834, 64 S.Ct. 660 (1944).

statute, will result in the repeal of federal rent control in a city is in effect the adoption of a repeal of such rent control.

Congress intended that the resolution described in this statute be a legislative act. Congress might have provided that upon a finding by some local official or body that a shortage of housing no longer exists in a community, federal rent control should terminate. The making of such a finding would have been an administrative act. In such a statute the policy of decontrolling rent whenever that factual situation was found would have been adopted and fixed by Congress. That is the course Congress took when it directed the Expediter to relinquish control whenever he should find such facts.[5] But Congress did not follow that course when it came to relinquishment pursuant to local community action. There it required that a resolution be adopted by the "governing body" and that it be "adopted for that purpose"; that is, for the termination of federal rent control. The resolution must be "based upon" a finding of fact. The whole of the provision is not merely for a finding of fact but is also for a legislative declaration of local public policy. The statute provides for a clear choice of policy on the part of the local governing body. The discretion to be exercised by that body is a political discretion. The final act is thus a legislative act. We think that to have been the clear intent of Congress.

The basic concepts involved in this matter are important. Basically, rent control is a local function, over which the Federal Government has no power. The Federal Rent Control Act is valid only as a war measure.[6] As war conditions receded Congress desired to relinquish federal control. It provided a number of different methods for such relinquishment. It provided for a voluntary relinquishment by federal authority,[7] for relinquishment by cooperative action between the Federal Government and the Governors of the several states,[8] for relinquishment whenever the legislature of a state enacts state rent control legislation,[9] and for relinquishment in any incorporated city, town or village when the governing body of the city adopts a resolution for that purpose, based upon a finding as to the existing housing situation.

We are of opinion that the federal statute requires the exercise of legislative power by the governing body of a city. The resolution adopted by the City Council of the City of Los Angeles was not published, posted, or held for thirty days, as required by the City Charter for the valid exercise of legislative power. It was invalid as an exercise of legislative power. So it was invalid for the purposes of the federal decontrol statute.

The fact that the action was called by the City Council a resolution instead of an ordinance is of no importance. The Council could not fix the validity of its action under its charter by the mere choice of a name for the action. Moreover, if the action was in reality merely a resolution as that word is used in the City Charter, it was invalid because it was an exercise of legislative power, required by the char-

[5] 50 U.S.C.A. App., sec. 1894(c).

[6] Woods v. Miller Co., 333 U.S. 138, 92 L.Ed. 596, 68 S.Ct. 421 (1948).

[7] 50 U.S.C.A. App., sec. 1894(c).

[8] 50 U.S.C.A. App., sec. 1894(c).

[9] 50 U.S.C.A. App., sec 1894(j)(1) and (2).

ter to be by ordinance. The use of the word "resolution" instead of "ordinance" in the federal statute is of no importance. Congress was enacting a statute applicable to scores of cities, towns and villages and many different procedures, restrictions and terminologies. It intended that each community should determine by its own local method an issue of importance to the community. It used a word of broad, general meaning, not a word of art. The requirement that the action be in accordance with applicable local law shows that Congress did not mean to specify any particular procedure. When it said "resolution" it did not mean to specify a particular technicality.

A determination by the Expediter as to whether a resolution received by him was adopted in accordance with local law is the sort of determination which executive officials must make constantly in the administration of laws enacted by Congress. But in the case at bar the Expediter acted upon an assumed power which he clearly did not have. In his letter rejecting the resolution of the City Council he recited the reasons for his action, principally his judgment that the resolution was not based upon findings which could reasonably be reached as the result of the public hearing. He said that he had received a report from an impartial observer at the hearing and had heard "through a recording" the exact events which transpired at the hearing and had received a petition from a group purporting to act on behalf of 300,000 tenant families in the City. The statute here under consideration gives the Expediter no power to weigh the evidence received by a local city council in the course of a public hearing, or to determine the relevancy of such evidence. In that respect the conclusion of the city council is final and unreviewable by the Expediter, as the Committees of the Congress said the statute was intended to provide.[10] Congress did not require a record of the required hearing to be kept or forwarded to the Expediter. It would be strange indeed if it intended that he review evidence but prescribed no record of the evidence. Moreover, since the action of the Council was legislative, the hearing was legislative and the consequent action is not required to be upon the preponderance of the evidence, or upon evidence at all. A legislative hearing is for two principal purposes, (1) the information of the legislators and (2) an opportunity for persons who desire to speak, either in testimony or in argument, upon the matter. But legislators are in no way bound by the statements thus received by them. They may act upon presented facts, or upon mere arguments, or upon their own convictions. They act for the future, not in respect to the past. "Evidence" in the legislative process may be helpful, but it certainly is not restrictive.

Since the Expediter so vigorously asserts the propriety of his course as described in his letter of October 23, 1950, we are impelled to comment that, even if he had power to determine whether the finding of the City Council could reasonably be reached as the result of the evidence presented at the hearing, he could not do so by the process which he followed. There were official minutes of the session of the Council at which this hearing occurred. They recited in summary fashion the presentations by the persons who spoke. The Expediter says that he had a report from an unidentified observer and a "record-

[10] Sen. Rep. No. 1780, 81st Cong., 2d Sess. 10; H. R. Rep. No. 2116, 81st Cong., 2d Sess. 5.

ing" undescribed and unrevealed. Upon such information he asserts an official conclusion contradictory to the conclusion reached by the City Council. Without going into an extended discussion of the subject, we simply state that the Expediter's claim to such authority is far beyond any conceivable valid process in a matter of this sort. The validity, probity, credibility, and weight of evidence officially received cannot be determined by a reviewing authority through the medium of unidentified observers or unrevealed "recordings". The Expediter's assertion in oral argument that there was no evidence sustaining decontrol presented at the hearing before the Council has not the slightest support in the record. The first thing presented at that hearing was the report of a survey of rental vacancies, which survey had been authorized by the Council some months theretofore; and the second thing presented was the fact that seventy per cent of the cities in Los Angeles County have been decontrolled.

Because the resolution adopted by the City Council was not published or posted or held for thirty days pending a possible petition for referendum, all as required by the City Charter for valid legislative action, we must hold it not, as yet, adopted in accordance with applicable local law and therefore not effective for the purposes of the federal statute prescribing relinquishment of federal rent control in an incorporated city, town or village. The judgment of the District Court is, therefore, reversed and the case remanded with instructions to dismiss the action.

Reversed and remanded.

[fol. 73] [Stamp:] United States Court of Appeals for the District of Columbia Circuit, Filed Nov. 24, 1950, Joseph W. Stewart, Clerk.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10826, October Term, 1950.

TIGHE E. WOODS, Housing Expediter, Office of the Housing Expediter, Appellant,

vs.

FRANK W. BABCOCK, et al., Appellees

No. 10827, October Term, 1950.

MAXWELL MILLER, Individually and as a Member and Representative of Los Angeles Tenants Council, etc., Appellant,

vs.

FRANK W. BABCOCK, et al., Appellees

Appeals from the United States District Court for the District of Columbia.

Before: Wilbur K. Miller, Prettyman and Bazelon, Circuit Judges.

Judgment

These appeals came on to be heard on the transcript of the record from the United States District Court for the District of Columbia, and were argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court appealed from herein be, and the same is hereby, reversed, with costs to appellant Miller, and that this cause be, and it is hereby, remanded to the said District Court with instructions to dismiss the complaint.

It is further ordered by the Court that the stay order entered herein by this Court on November 16, 1950, be, and it is hereby, dissolved forthwith.

Per Circuit Judge Prettyman.

Dated November 24, 1950, 4 o'clock P. M.

[fol. 74] [Stamp:] United States Court of Appeals for the District of Columbia Circuit. Filed November 28, 1950. Joseph W. Stewart, Clerk.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10826

TIGHE E. WOODS, Housing Expediter, Office of the Housing Expediter, Appellant,

v.

FRANK W. BABCOCK, and the CITY OF LOS ANGELES, et al., Appellees

No. 10827

MAXWELL MILLER, individually and as a member and representative of Los Angeles Tenants Council, etc., Appellant,

v.

FRANK W. BABCOCK and the CITY OF LOS ANGELES, et al., Appellees

DESIGNATION OF RECORD

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above entitled cause, and include therein the following:

1. Appendices to briefs of the parties.
2. Minute entry of argument.
3. Opinion.
4. Judgment.
5. This designation.

[fol. 75] 6. Clerk's certificate.

Charles S. Rhyne, 730 Jackson Place, N. W., Washington 6, D. C. Attorney for City of Los Angeles, et al., Appellees.

I certify that a copy of the foregoing Designation of Record has been personally served on November —, 1950, by leaving a copy thereof at the offices of: Benjamin Freid-

son, Attorney for Tighe E. Woods, Appellant, Office of the Housing Expediter, 4th Street and Adams Drive, S. W., Washington, D. C.; Hardy K. Maclay, Attorney for Maxwell Miller, Appellant, 917 Fifteenth St., N. W., Washington, D. C.; and Gordon Eakle, Attorney for Frank W. Babcock, Appellee, 1025 Connecticut Avenue, N. W., Washington, D. C.

Charles S. Rhyne.

[fol. 76] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit, hereby certify that the foregoing pages numbered from 1 to 75, both inclusive, constitute a true copy of the appendices to the briefs of the parties and of the pleadings and proceedings of the said Court of Appeals as designated by counsel in the cases of Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, Appellant, v. Frank W. Babcock, et al., Appellees, Maxwell Miller, Individually and as a Member and Representative of Los Angeles Tenants Council, etc., Appellant, v. Frank W. Babcock, et al., Appellees, Nos. 10826 and 10827, October Term, 1950, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this thirtieth day of November, A. D. 1950.

Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit.
[SEAL.]

IN THE

Supreme Court of the United States

October Term, 1950.

No. 426

CITY OF LOS ANGELES, etc., et al., and FRANK W. BABCOCK, *Petitioners*

v.

TIGHE E. WOODS, Housing Expediter, etc., et al., and MAXWELL MILLER, etc., et al., *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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IN THE

Supreme Court of the United States

October Term, 1950.

No.

CITY OF LOS ANGELES, etc., et al., and FRANK W. BABCOCK, *Petitioners*

v.

TIGHE E. WOODS, Housing Expediter, etc., et al., and MAXWELL MILLER, etc., et al., *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above-entitled case on November 24, 1950.

OPINIONS BELOW.

The opinion of the District Court and the opinion of the Court of Appeals (R. 65) are not yet reported.

JURISDICTION.

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered on November

24, 1950. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1).

QUESTION PRESENTED.

Where the declared legislative policy of Congress as expressed in the Housing and Rent Act is to relinquish Federal control of rents by June 30, 1951, or sooner, and Congress allows for the actual fulfillment of said policy by providing that the actual time and place of termination or continuance of Federal control shall be contingent upon and determined by a specified finding of fact on the existence or non-existence of a shortage of rental housing in each city by their respective local governing bodies, is the action of such local governing bodies in making such finding of fact the adoption of a legislative Act?

STATUTE INVOLVED.

The pertinent statutory and city charter provisions are set forth in the Appendix.

In summary, the Housing and Rent Act of 1950 provides that city councils may by adoption of resolutions in accordance with local law find the facts as to the existence or non-existence of a shortage in rental housing in their respective cities and upon certification of such resolution to the Housing Expediter rent control in said city is continued or terminated in accordance with said finding. The Los Angeles Charter provides that all legislative action of that City must be by ordinance while other action may be by resolution or order. (§ 21).

STATEMENT.

On July 14, 1950, the City Council of the City of Los Angeles published a notice advising the general public that in accordance with Section 204(j)(3) of the Housing and Rent Act of 1947 as amended, the City council would hold

a public hearing on July 28, 1950, to determine whether or not there existed such a shortage in rental housing accommodations in the City of Los Angeles as to require the continuance of Federal rent control in that city. On July 28, 1950, the City Council held the public hearing in accordance with the previously mentioned notice. On the same day the City Council adopted a resolution in which the Council stated that, as a result of the public hearing held on that day it found that there no longer exists such a shortage in rental housing accommodations as to require rent control in the City of Los Angeles. The resolution was forwarded to Tighe E. Woods as Federal Housing Expediter who received it on August 2, 1950. (R. 63.)

Shortly after the Housing Expediter received the resolution and publically announced he would terminate rent control thereupon, Respondent Miller instituted a suit against the Housing Expediter in the United States District Court for the District of Columbia to enjoin the Housing Expediter from terminating Federal rent control in Los Angeles. He alleged that the Housing Expediter was then threatening to terminate Federal rent control in that City on the basis of the Resolution of the City Council received by him.

With Petitioner City of Los Angeles as an intervening party defendant the suit of Respondent Miller was dismissed by the District Court as a matter of law. The judgment of the District Court was affirmed by the United States Court of Appeals for the District of Columbia Circuit on jurisdictional grounds, specifically that the amount in controversy did not exceed the sum of three thousand dollars. Immediately thereafter Respondent Miller instituted a similar suit in the Municipal Court for the District of Columbia and, with Petitioner City of Los Angeles again as an intervening party defendant, the Municipal Court dismissed the suit on the ground that the action was one against the United States, which had not given its consent to such suit.

Throughout the course of the above-described litigatio temporary restraining orders and stay orders *pendent lite* prevented the Housing Expediter from terminatin Federal rent control in Los Angeles in accordance with th City Council's Resolution. These restraining orders an stay orders were issued on the continued allegations o Respondent Miller that the Housing Expediter the threatened to terminate Federal rent control in Los Angeles and upon the continued assertion by the Housing Expedite to the courts in question that if he were not restrained from doing so he would immediately terminate Federal rent control in Los Angeles in accordance with the aforementioned Resolution of the City Council. This Court refused to issue a stay order upon application therefor by Respondent Miller on October 7, 1950.

Immediately following the dismissal of Respondent Miller's action by the Municipal Court and on October 23, 1950, the latest and final restraining order against him having been dissolved, the Housing Expediter, in a communication to the Los Angeles City Council, advised that body that he would not terminate Federal rent control in that City, on the ground that the required finding of fact made by the City Council as to the availability of rental housing accommodations in the City could not in his opinion be reasonably said to flow from the evidence adduced at the public hearing held by the City Council prior to adoption of the Resolution. (R. **17**). In his communication the Housing Expediter further advised the City Council that he was made aware of the proceedings at the public hearing and the evidence presented thereat through information received from an unidentified "impartial observer" and through a wire recording of the public hearing which had been furnished him by an unidentified source. At the hearing in the District Court Respondent Miller revealed that it was he who had furnished the recording. No request had been made to the City Council by the Expediter for the official record of the public hearing.

Upon the Housing Expediter's announced refusal to terminate rent control in Los Angeles despite his receipt of the aforementioned Resolution of the City Council, Petitioner Babcock instituted this action against Tighe E. Woods, Housing Expediter, in the United States District Court for the District of Columbia, seeking a mandatory injunction which would compel the Housing Expediter to terminate rent control in Los Angeles in accordance with the resolution of the City Council. Petitioner City of Los Angeles and Respondent Miller intervened therein as a party plaintiff and a party defendant respectively. The District Court granted the mandatory injunction. An appeal was taken to the United States Court of Appeals for the District of Columbia Circuit. That Court reversed the judgment of the District Court and ordered the complaint dismissed on the ground that the Los Angeles City Council should have made its finding of fact in the form of an ordinance rather than in the form of a resolution, holding that the language "resolution" in the Housing and Rent Act is not controlling but that the City Council is exercising a legislative power which must be exercised by ordinance.

SPECIFICATION OF ERRORS.

The United States Court of Appeals for the District of Columbia Circuit erred:

1. In reversing the judgment of the District Court and in ordering that the complaint be dismissed.

2. In holding that the fact finding by the City Council of Los Angeles for the purpose of discontinuing Federal rent control in Los Angeles pursuant to Section 204(j)(3) of the Housing and Rent Act of 1947 as amended, was an exercise of legislative power.

REASONS RELIED ON FOR THE ALLOWANCE O THE WRIT.

1. The Decision of the Court of Appeals renders of dou ful validity the action of 1000 cities and renders u certain the action which must be taken before Decemb 31, 1950, by 2000 more cities, is contrary to long esta lished unanimous administrative interpretation a has brought chaos into the legal relationships of lan lords and tenants where rent control has been ter nated or continued.

The United States Court of Appeals for the District Columbia Circuit has decided a question of general impo tance which will directly endanger the validity of acti already taken by local governing bodies in continuing terminating Federal rent control in an estimated 1000 citi throughout the Nation, which have either terminated su controls or continued them until June 30, 1951, by resol tions of their governing bodies adopted for that purpo pursuant to Section 204(j)(3) of the Housing and Rent A of 1947 as amended. Some 2000 other cities have unt December 31, 1950, to make findings of fact continuing terminating rent control. We are informed that the Housi Expediter has never rejected any of the more than 10 resolutions received by him on the ground that they we legislative acts and should be in the form of ordinances an he did not reject the Los Angeles resolution on the groun that it was not in the form of an ordinance. His lett of rejection does not even mention the possible existenc of such a ground for rejection. (R. 14). It is believed t be almost universal that most of the local governing bodie must adopt legislative acts by ordinance and further tha such action by ordinance must usually be published befor it is valid. Not all cities have the referendum provision on ordinances which the Los Angeles charter contains bu the publication requirement is practically universal. An

none of the estimated 1000 resolutions which have been adopted have been published according to the best available information.

Under the decision of the Court of Appeals the continuation or termination of Federal rent control by local governing bodies pursuant to Section 204(j)(3) of the Housing and Rent Act of 1947 as amended, is held to be an exercise of legislative power. Hence if the decision is correct it follows that the action of hundreds of local governing bodies in continuing or terminating Federal rent control by resolution is illegal and void, the result of which is to leave the status of rent control in these cities in doubt and confusion and render chaotic the legal relations between hundreds of thousands of landlords and tenants in these areas. Also, the cities which have not acted in many instances do not have time to comply with the formal requirements for adoption of an ordinance but can adopt resolutions as the latter are not usually surrounded by such formal requirements. With the legal relationships between some 40,000,000 people thus in doubt, the public interest in an early decision is great because the impact of the lower Court's decision is so serious.

2. The decision that a city council's finding of fact for termination or continuance of federal rent control is a legislative act is in conflict with the decisions of this honorable court.

The decision of the Court of Appeals is in conflict with the decisions of this Court referred to below. The Court of Appeals held that when, for the purpose of terminating Federal rent control in the City of Los Angeles pursuant to Section 204(j)(3) of the Housing and Rent Act of 1947 as amended, the City Council of Los Angeles, by resolution, in accordance with local Los Angeles law applicable to resolutions, found as a result of a public hearing that there no longer exists such a shortage in rental housing accomodations as to require rent control in the City of Los Angeles,

the making of such finding was the exercise of legislative power. The court held that, where the Charter of the City of Los Angeles requires the exercise of legislative power by the City Council to be by ordinance, requires that ordinances be published and provides that ordinances shall not become effective for a period of thirty days after publication, during which time they are subject to a petition for referendum, the aforementioned resolution had no legal effect because it was neither published nor held for thirty days pending a possible petition for referendum. The Charter provides that action by the City Council other than the exercise of legislative power may be by resolution or order adopted upon a motion.

Petitioners contend that when, pursuant to the authority delegated to it by the Act, the City Council made its finding of fact as to the shortage of rental housing in Los Angeles the Council was engaging in an administrative or executive act and was not exercising legislative power. The Act expressed the legislative will and policy of Congress that Federal control of rents should be relinquished by June 30, 1951, or sooner, and that the actual time and location of such relinquishment was to be determined by a specified contingency, namely, the finding by a local governing body as a result of a public hearing that there no longer exists in the local area such a shortage in rental housing as to require rent control. Thus legislative power was finally and completely exercised when Congress adopted the Housing and Rent Act and its amendments and all that remained to be done, so far as the instant case is concerned, was the administrative determination as to when a specified factual condition existed which would, through the expressed will of Congress, continue or terminate rent control. The authority to make this administrative determination was vested by Congress, so far as concerns this case, in local governing bodies. In *Hirabayashi* v. *United States*, 320 U. S. 81 at page 104 this Court stated that the essentials of the *legislative* function are preserved when Congress au-

thorizes a statutory command to become operative, upon ascertainment of a basic conclusion of fact by a designated representative of the government. The City Council provisions of the resolution do not terminate rent control, it is the Act of Congress which does the terminating. The adoption of the declared policy by Congress and its definition of the circumstances in which its command is to be effective constitute the performance of the legislative function. *Opp Cotton Mills, Inc.* v. *Administrator*, 312 U. S. 126.

In *Mutual Film Corp.* v. *Industrial Commission*, 236 U. S. 230, this Court repeated a previously recognized principle that legislative power is completely exercised where the law is perfect, final, and decisive in all of its parts, and the discretion given only relates to its execution. The legislative power having been completely exercised by Congress the action of the City Council in making its finding of fact was a mere administrative action which determined the application of the previously expressed policy of Congress.

In *Woods* v. *Miller*, 333 U. S. 138, it was expressly urged upon this Court that the power to terminate Federal rent control locally given to the Housing Expediter—similar to the power given to local governing bodies—is an essential legislative power and that therefore it could not be delegated. The Court refused to adhere to such a theory. Obviously, if the power is not legislative when the Housing Expediter exercises it, it is not legislative when the City Council of Los Angeles exercises it, the power in each case coming from the same source. In *Opp Cotton Mills, Inc.* v. *Administrator*, *supra*, this Court held that the essentials of the legislative function are the determination of the legislative policy and its formulation as a rule of conduct, and that such essentials are preserved when Congress specifies the basic conclusions of fact upon ascertainment of which, from relevant data by a designated administrative agency, it ordains that its statutory command is to be effective.

In every case which has been decided by the Supreme Court of California involving findings of fact by local gov-

erning bodies to initiate or terminate legislative program prescribed by state statutes, that Court had held that such findings or action by local governing bodies is *not* legislative in character. The right of referendum has, therefore, always been denied on such exercise of "local options" by local governing bodies. *Kleiber* v. *City and County of San Francisco*, 18 Cal. (2d) 718, 117 Pac. (2d) 657; *Housing Authority of The City of Eureka* v. *Superior Court*, 35 Cal. A. C. 594, 219 Pac. (2d) 457; *Simpson* v. *Hite*, 36 Adv. Cal. Rep. 61. In the *Housing Authority of The City of Eureka* case, *supra*, the Court said:

> "The Kleiber decision is not limited by the language of the San Francisco charter; in broad terms the court determined the nature of local government's acts. *When the sole basis for a determination is whether a certain 'contingent effect' exists to warrant local application of state legislation, the exercise of that narrow authority is an administrative act and not a legislative one . . .*" (Italics supplied.)

3. The action of the City Council in finding the facts was not in conflict with the requirements of the charter of the City of Los Angeles.

In arriving at the conclusion that the City of Los Angeles should have proceeded by ordinance the Court of Appeals has set up its own definition of a legislative act and then holds that under the Charter of the City of Los Angeles such legislative action must be taken by ordinance.

The Court simply ignored every California decision construing what is legislative action as contemplated by the Charter of the City of Los Angeles and that of other cities, and as to counties, throughout the state. In other words the Court has ignored California "local applicable law" in arriving at its erroneous conclusion that the action to be taken by the City Council must be by ordinance. *Kleiber* v. *City and County of San Francisco; Housing Authority of City of Eureka* v. *Superior Court*, and *Simpson* v. *Hite*, *supra*.

The provision for the exercise of the referendum found in the state constitution and supplemented by local laws has given rise to considerable litigation on the question of what constitutes legislative action subject to referendum. The California case law on the subject has clarified the question to the point that it is clear at least to those familiar with the California procedure that the finding of fact required of City Councils under the Rent Control Act as the basis for termination or continuance of rent control is not legislative in character and the cases just cited in preceding paragraphs so hold. This failure on the part of the Court of Appeals to follow the local rule of decision has resulted in its erroneous conclusion that the act of the Council of the City of Los Angeles is legislative in the sense that under the City Charter the action should have been taken by ordinance. A conclusion clearly at variance with local applicable law as demonstrated by the California decisions just cited interpreting California constitutional and statutory provisions.

4. The Court of Appeals misconstrued the federal statute as Congress did not intend to confer power upon city councils to legislate on rent control.

The Court declares that "Congress intended that the resolution described in this statute be a legislative act." The Court bases this statement apparently on the theory that since the resolution must be adopted by the governing body for the purpose of terminating rent control based upon a finding of fact, the whole of the provision is not merely for a finding of fact but is also for a legislative declaration of local public policy, *and that the statute provides for a clear choice of policy on the part of the local governing body*, thus, reasons the Court, "the discretion to be exercised by that body is a political discretion" and that "the final act is thus a legislative act."

Is it possible that Congress intended to delegate its *legislative* power to local governing bodies on this matter? Is

it possible that the Federal War Emergency Powers
stricting the contractual rights of individuals was intend
by Congress to be placed in the hands of local governi
bodies as a political discretionary matter? Clearly n
What Congress intended, as shown by the legislative h
tory in adopting the statute in question, was to have a f
tual determination at the local level of the necessity
further rent control in individual communities.

The attempt by the Court of Appeals to attach sign
cance to the qualification that the resolution must be "
accordance with applicable local law" as indicating leg
lative character is a *non sequitur*. As the Court its
points out "Congress was enacting a statute applicable
scores of cities, towns and villages and many different pr
cedures, restrictions and terminologies. It intended th
each community should determine by its own local meth
an issue of importance to the community." This is u
doubtedly what Congress had in mind. Whether the acti
to be taken should follow a certain *procedure* establish
by the Federal statute or by such *procedure* as follow
the local law governing councilmanic action was the qu
tion which Congress had in mind and Congress decided
the latter course. Clearly this can give no foundation f
the claim that Congress intended Councilmanic action
be of a legislative character.

Moreover, the idea that legislative action is taken at t
municipal level by ordinance is so well known generally
to be a matter of common knowledge to those familiar wi
government. Surely the law makers, i. e. Congress, a
aware of this fact and if it had been in the mind of Co
gress to invest legislative power in local governmenta
entities under the statute Congress would have used t
word ordinance instead of resolution.

The fallacy in the Court's reasoning is further demo
strated by the Court's holding that if Congress had pr
vided that the finding be made by a local official or body
would have been an "administrative act" and that "i

such a statute the policy of decontrolling rent whenever that factual situation was found would have been adopted and fixed by Congress," but the statute requires that a resolution be adopted by the "governing" body for the purpose of decontrolling rents so the action is therefore legislative.

The Court obviously overlooks the cases legion in number, where either a street superintendent or road commissioner acts in an improvement proceeding or the governing body of the local governmental entity acts in the same matter and both are acting non-legislative. The fact that Congress entrusted the local administration of rent decontrol to the governing body of the municipality instead of to the Mayor or Chief of Police is of no consequence as far as the character of the act involved is concerned. See *J. W. Hampton* v. *United States*, 276 U. S. 394, 407.

Can Congress enact a statute the enforcement or effectiveness of which will depend upon local public policy to be determined by local agencies deriving their sole legislative powers from state government? Such a statute would be a contradiction in terms. If local governmental entities are to determine the matter in accordance with their own local public policy why have a Federal statute at all? But Congress did not attempt to do this. *It* fixed the public policy when *it* provided that local governing bodies could adopt a resolution for the termination of rent control when based on a finding reached as the result of a public hearing "that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village."

It is clear that the Court of Appeals has seized upon "distinctions without a difference" and an entirely erroneous theory in interpreting Congressional intent in arriving at the conclusion that the Council of the City of Los Angeles exercised legislative power in adopting the rent decontrol resolution in question—a conclusion which is not only erroneous but fraught with the gravest consequences if allowed to stand.

5. The statute as construed by the Court of Appeals would be void as an unconstitutional delegation of legislative power.

The Court of Appeals states that "basically rent control is a local function over which the Federal Government has no power. The Federal Rent Control Act is valid only as a war measure. As war conditions receded Congress desired to relinquish federal control."

Apparently the Court holds that Congress in the exercise of its war emergency powers adopted local legislation and then left it up to either Federal officials to voluntarily terminate this local legislation or terminate it by agreement between the Federal Government and the Governors of the several states or by the state legislatures enacting state rent control legislation or finally by local governing bodies. The Court uses the expression "relinquishment."

In the first place war emergency does not create power, at most it furnishes reasonable grounds for exercising power already possessed by Congress. Therefore, rent control is not a local function over which the Federal Government has no power if the Federal Rent Control Act itself is to be held valid. If the Act is valid, what Congress did was to exercise its legislative power vested in it at all times and reasonably invoked because of the war emergency.

What the Court of Appeals is holding is that now Congress has provided that this Federal legislation over a matter of local concern may be amended or repealed by (1) voluntary action by Federal officials (2) cooperative action between the Federal government and the governors of the several states (3) rent control legislation by a state legislature and (4) action by local governing bodies in conformity with the provisions of the Federal statute.

According to the reasoning of the Court of Appeals the Federal legislation in question is to be nullified by administrative authority or by state or municipal legislation. The repeal of a Federal statute by a state legislature or a city

council is indeed a novel idea and is likewise violative of every principle against delegation of legislative power.

A statute will not, if it is possible to do otherwise, be construed in such manner as to be violative of constitutional requirements. Rather it will be construed in harmony therewith. Such construction requires that the statute in question be construed on the basis that rent control was a matter of nationwide necessity and within the power of Congress to regulate. That local conditions vary the need for the exercise of such control and that Congress provided the conditions upon which such legislation should terminate locally; that local governing bodies in acting in accordance with the statute are but instrumentalities of the Federal Government in determining the existence of facts prescribed by Congress as the condition upon which controls should terminate locally; that in so doing they are but establishing the conditions upon which the legislation shall cease to operate; that in making such findings and acting in accordance therewith the local governing body is exercising only at most administrative or executive power.

As said by this honorable court in *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194, 214:

> "The Congress may not delegate its purely legislative power to a commission, but, having laid down the general rules of action under which a commission shall proceed, it may require of that commission the application of such rules to particular situations and the investigation of facts, with a view to making orders in a particular matter within the rules laid down by the Congress."

And in *J. W. Hampton Co.* v. *United States*, 276 U. S. 394, 407, this Court said:

> "Congress may feel itself unable conveniently to determine exactly when its exercise of the legislative power should become effective, because dependent on future conditions, and it may leave the determination of such time to the decision of an executive, or, as often happens in matters of state legislation, it may be left

> to a popular vote of the residents of a district to be affected by the legislation. While in a sense one may say that such residents are exercising legislative power, it is not an exact statement, because the power has already been exercised legislatively by the body vested with that power under the Constitution, the condition of its legislation going into effect being made dependent by the legislature on the expression of the voters of a certain district. . . ."

This is the true interpretation of the statute and the only one in harmony with constitutional principles and it is respectfully submitted that the Court of Appeals erred in not following it.

CONCLUSION.

For the reasons given above this Petition should be granted and the decision of the Court of Appeals reversed at the earliest possible time.

Respectfully submitted,

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APPENDIX A.

1. Housing and Rent Act of 1950.

[PUBLIC LAW 574—81ST CONGRESS]
[CHAPTER 354—2D SESSION]
[S. 3181]

AN ACT

To extend the Housing and Rent Act of 1947, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Housing and Rent Act of 1950".

SEC. 2. Section 4 (e) of the Housing and Rent Act of 1947, as amended, is hereby amended by striking out "June 30, 1950" and inserting in lieu thereof "June 30, 1951".

SEC. 3. Section 204 (a) of the Housing and Rent Act of 1947, as amended, is hereby amended by striking out "June 30, 1950" and inserting in lieu thereof "June 30, 1951".

SEC. 4. Section 204 (f) of the Housing and Rent Act of 1947, as amended, is hereby amended to read as follows:

"(f) (1) The provisions of this title, except section 204 (a), shall cease to be in effect at the close of December 31, 1950, except that they shall cease to be in effect at the close of June 30, 1951—

"(A) in any incorporated city, town, or village which, at a time when maximum rents under this title are in effect therein, and prior to December 31, 1950, declares (by resolution of its governing body adopted for that purpose, or by popular referendum, in accordance with local law) that a shortage of rental housing accommodations exists which requires the continuance of rent control in such city, town, or village; and

"(B) in any unincorporated locality in a defense-rental area in which one or more incorporated cities, towns, or villages constituting the major portion of the

defense-rental area have made the declaration specified in subparagraph (A) at a time when maximum rents under this title were in effect in such unincorporated locality.

"(2) Any incorporated city, town, or village which makes the declaration specified in paragraph (1) (A) of this subsection shall notify the Housing Expediter in writing of such action promptly after it has been taken.

"(3) Notwithstanding any provision of paragraph (1) of this subsection, the provisions of this title shall cease to be in effect upon the date of a proclamation by the President or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this title is not necessary because of the existence of an emergency, whichever date is the earlier.

"(4) Notwithstanding any provision of paragraph (1) or (3) of this subsection, the provisions of this title and regulations, orders, and requirements thereunder shall be treated as still remaining in force for the purpose of sustaining any proper suit or action with respect to any right or liability incurred prior to the termination date specified in such paragraph."

SEC. 5. Section 204 (j) (3) of the Housing and Rent Act of 1947, as amended, is hereby amended to read as follows:

"(3) The Housing Expediter shall terminate the provisions of this title in any incorporated city, town, village, or in the unincorporated area of any county upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law and based upon a finding by such governing body reached as the result of a public hearing held after ten days' notice, that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town, village, or unincorporated area in such county: *Provided*, That where the major portion of a defense-rental area has been decontrolled pursuant to this paragraph (3), the Housing Expediter shall decontrol any unincorporated locality in the remainder of such area."

SEC. 6. Nothing in this Act or in the Housing and Rent Act of 1947, as amended, shall be construed to require any person to offer any housing accommodations for rent.

SEC. 7. If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of the Act, and the applicability of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 8. This Act shall become effective on the first day of the first calendar month following the month in which it is enacted.

Approved June 23, 1950.

APPENDIX B.

2. Provisions of Charter of the City of Los Angeles.

"SEC. 21. All legislative power of the city except as herein otherwise provided is vested in the Council and shall be exercised by ordinance, subject to the power of veto or approval by the Mayor as herein set forth. Other action of the Council may be by order or resolution, upon motion."

"Sec. 31. All ordinances finally adopted under the provisions of this charter shall be published in the English language by at least one insertion in some daily newspaper printed and published in the City of Los Angeles, or by posting for at least ten days in three public places in said city, and until and without such publication or posting no ordinance shall be valid or take effect."

"Sec. 281. No ordinance, legislative, administrative or executive, passed by the Council shall go into effect until the expiration of thirty days from its publication, except an ordinance ordering, or otherwise relating to an election or to the levying or collection of the annual city taxes; an ordinance establishing or changing the name of, or curb lines of, or respecting the establishment or change of grade of, or the improvement in any manner of, or the opening, widening, straightening or extension of, streets, boulevards, alleys, courts or other public places, and an ordinance respecting the construction of sewers or storm drains, or respecting the bringing or conduct of suits or actions or the levying or collection of local assessments upon private

property for any of said purposes, or respecting the condemnation of lands for parks, boulevards or playgrounds under laws or ordinances providing for the payment of the expense thereof by local assessments upon private property, or any ordinance authorized or required by the laws of this state, or by or under the provisions of this charter, respecting the improvement of streets or other public places; and an ordinance required for the immediate preservation of the public peace, health or safety, which shall contain a specific statement showing its urgency, and is passed by a three-fourths vote of the Council; but all ordinances of any of the classes heretofore excepted by this section shall take effect upon their publication. No grant of any franchise, right or privilege shall ever be construed to be an urgency measure, but all grants of franchises, rights or privileges shall be subject to a referendary vote hereinafter provided. No ordinance, order or resolution passed by the Council making or authorizing any contract shall go into effect until the expiration of thirty days from the publication of such ordinance, or the adoption of such order or resolution, except contracts for street or other public improvements, the cost and expenses whereof are to be paid by local assessments, contracts requiring payment from funds under the control of the Water and Power, or Harbor Departments, and contracts that require the payment by the city of less than twenty-five thousand dollars, and except any ordinance, order or resolution of the Council authorizing the sale or issuance of bonds of the city or of any district therein. Except as hereinbefore provided, orders and resolutions shall take effect upon their passage."

"Sec. 282. At any time within the thirty days mentioned in the preceding section, a petition addressed to the Council, and signed by qualified electors of said city equal in number to at least ten per cent of such qualified electors, computed upon the basis for estimating percentages specified in Section 272 hereof, may be filed with the City Clerk, demanding the submission of any ordinance, order or resolution passed by the Council, to a vote of the qualified electors of said city, except any ordinance, order or resolution which shall take effect upon its publication or passage as provided in the preceding section. Any such petition shall be known as a referendary petition, and shall

contain the ordinance, order or resolution in full, the submission of which to a vote is thereby demanded. Such vote shall be known as a referendary vote.

"The provisions of this charter, relating to the form and to the mode of signing initiative petitions, and to the filing, examination, certification and amendment of the same, and to the presentation thereof to the Council by the City Clerk, shall apply to referendary petitions filed under the charter.

"If any referendary petition or petitions be filed, as hereinbefore provided, and the City Clerk shall be unable to make his certificate to the sufficiency or insufficiency thereof within thirty days after the publication of the ordinance, or the adoption of the order or resolution, the submission of which to a referendary vote is thereby demanded, such ordinance, order or resolution shall be suspended from taking effect after the expiration of said thirty days and until the date of the certificate of the City Clerk to the sufficiency or insufficiency of such petition or petitions. If by the certificate of the City Clerk such petition or petitions are certified to be sufficient, such ordinance, order or resolution shall not go into effect until it shall be adopted by vote of the electors of the city, as hereinafter provided; but if by such certificate, such petition or petitions are certified to be insufficient, such ordinance, order or resolution shall go into effect upon the date of such certificate; provided, however, that no such ordinance, order or resolution shall take effect until the expiration of said thirty days. No referendary petition shall be amended by a supplemental petition filed after the expiration of said thirty days. In case more than one referendary petition be filed in relation to any certain ordinance, order or resolution, all such petitions shall be considered in determining the number of qualified electors, and with the same force and effect as though all the names had been appended to the one petition."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 426

CITY OF LOS ANGELES, etc., et al., and FRANK W. BABCOCK, *Petitioners*

v.

TIGHE E. WOODS, Housing Expediter, etc., et al., and MAXWELL MILLER, etc., et al., *Respondent*

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT IN BEHALF OF THE MEMBER CITIES OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS AS AMICI CURIAE.

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STATEMENT.

The petition for certiorari in this case seeks review of a final judgment of the United States Court of Appeals for the District of Columbia Circuit in *Tighe E. Woods, Housing Expediter, Office of the Housing Expediter* v. *Frank W. Babcock and the City of Los Angeles, et al.*, ——— Fed.

(2d) ———, No. 10826 (1950) and *Maxwell Miller* v. *W. Babcock and the City of Los Angeles, et al.*, ——
(2d) ———, No. 10827 (1950), reversing the judgm
the United States District Court for the District
lumbia, the Court of Appeals holding that in adop
rent decontrol "resolution" pursuant to the provisi
Section 204(j)(3) of the Federal Housing and Re
of 1950 the City Council of the City of Los Angele
legislating and should have acted by "ordinance"
than "resolution."

THE IMPORTANCE OF THE ISSUE PRESENT

This brief in support of the Petition for Certiorari
is filed on behalf of the 591 member municipalities
National Institute of Municipal Law Officers and th
lions of local citizens resident therein who are vitali
cerned with the application and interpretation of t
called "local option" provisions of the Housing and
Act of 1947 as amended. On November 29, 1950, th
tional Institute of Municipal Law Officers at its A
Convention in New Orleans adopted the following re
tion:

> "WHEREAS, more than 1000 city councils have
> the purpose of terminating or continuing rent co
> made findings of fact on whether a shortage of r
> housing exists in their city and have incorporated
> findings in resolutions as required by the Housing
> Rent Act of 1950, and
>
> WHEREAS, the United States Court of Appeals fo
> District of Columbia has held that said finding
> legislative Act and should have been made by
> nance rather than resolution, and
>
> WHEREAS, it is the unanimous belief of the Nati
> Institute of Municipal Law Officers that said hol
> is erroneous,
>
> NOW, THEREFORE, BE IT RESOLVED that the Nati
> Institute of Municipal Law Officers file all neces
> briefs in the Supreme Court of the United State
> support of reversal of that part of said decision
> take all other appropriate action."

The decision of the United States Court of Appeals for the District of Columbia Circuit in the instant case is therefore of major importance to thousands of municipalities throughout the United States. According to the Office of the Housing Expediter, it has been estimated that nearly 1,000 cities have already taken affirmative action in making the required findings of fact for extending or decontroling Federal rent controls pursuant to the provisions of the Housing and Rent Act of 1947 as amended. These local communities which have taken affirmative action have acted by "resolution" rather than by "ordinance" as the statute requires a "resolution" adopted in accordance with local law.

The decision in the instant case holding that such action is legislative casts grave doubts on the validity of local action in these communities which have acted by "resolution" rather than by "ordinance", for it is almost universally accepted and provided for in municipal law that legislative acts must be by "ordinance" and must be published before they are valid. It is also believed that none of the resolutions which have been adopted have been published, another usual requirement for such municipal legislative acts. While many cities do not have the referendum provisions involved in the Los Angeles charter interpreted by the Court of Appeals, nearly all cities require publication of ordinances.

Furthermore, the decision in the instant case has created a dilemma for those hundreds of cities and communities which may wish to take some affirmative action between now and December 31, 1950, by resolution to continue Federal rent controls. Not all cities have time to act by ordinance before that date and no attorney for such cities could approve of action by resolution if such action is illegal.

Suffice it to say, the decision in the instant case has created and will create considerable confusion since it is so patently inconsistent with the express language used by the Congress of the United States in adopting the so-called "local option" provisions of the Housing and Rent Act.

For the decision to stand undisturbed would mea
cities adopting resolutions extending Federal contr
yond December 31, 1950, would automatically be
trolled on that date, since the instant decision would
action by ordinance where city charters or applicabl
law requires legislative acts to be by ordinance. I
tion, those communities which have adopted decontro
lutions may discover that their resolutions are voi
Federal controls should have been in effect since th
of the adoption of the resolutions.

Cities are creatures of the states rather than the F
Government and no record is found of any state whi
conferred the power on cities to enact and adopt suc
rent controls. Surely Congress has not intended to
such power upon cities! The only reported cases o
rent control involve attempts by the City of New Y
adopt rent control legislation as local law, and thos
have been held invalid because the City of New
could not suspend or control rights and statutory re
of landlords and tenants conferred by state statutes on
subjects. *Gennis* v. *Milano*, 135 Misc. 209, 237 N. Y.,
(1929). See *Friedlander and Curreri, Rent Con
Federal-State-Municipal* (1948), p. 271, for the cas
validating the recent local laws on the same ground

The quesions presented and problems created by t
cision in the instant case are serious and urgent to
sands of municipalities. It is particularly urgent t
members of the National Institute of Municipal La
ficers which is operated by municipal legal advisor
counsellors who have the responsibility and duty to i
pret and apply the decision of the United States Co
Appeals for the District of Columbia Circuit to local a
which has been or will be taken. Since the decision
is of such national importance and conflicts with
expressed intention of the Congress of the United S
it is respectfully submitted that this Honorable
grant certiorari to review the judgment of the United S
Court of Appeals for the District of Columbia at the ea
possible date.

CONCLUSION.

In view of the importance of the issue presented here to hundreds of municipalities who are vitally interested in whether they have acted illegally in finding the required facts for terminating or continuing rent controls by "resolution" by acting in accordance with the express language of the Housing and Rent Act of 1950, and the importance of the issue to the hundreds of other cities which wish to know the answer to this question before December 31, 1950, so they can take legal action, it is respectfully submitted that the case be reviewed and re-examined by this Court at the earliest possible time.

As in *United States* v. *National City Lines*, 337 U. S. 78, 84, where this Court overruled a claim of Congressional ignorance in the use of the language "any civil action," there is not "the slightest justification for overriding the unequivocable words," of this statute for nowhere in the legislative history or even in the later administrative unanimous and uniform interpretation of the Act is there even the suggestion that in requiring incorporation of the requisite findings in a resolution "adopted for that purpose in accordance with applicable local law" for resolutions, the Congress meant an "ordinance" "adopted for that purpose in accordance with applicable local law" for ordinances. The opinion of Judge Holtzoff of the District Court set forth below as Appendix A herein, is believed to state the law correctly. The decision of the Court of Appeals not only is contrary to the express language of the Act but is contrary to reason and the law as expressed in the decisions of this Court and other Courts throughout

this Nation and should in the public interest be rev
at the earliest time which is possible for proper con
ation by this Honorable Court.

Respectfully submitted,

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APPENDIX.

Decision of the United States District Court for the District of Columbia

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IN THE ...NITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 4669-50

FRANK W. BABCOCK, *Plaintiff*,
CITY OF LOS ANGELES, et al., *Plaintiffs in Intervention*,

v.

TIGHE E. WOODS, etc., et al., *Defendant*.

Before Judge Alexander Holtzoff.

OPINION OF THE COURT.

THE COURT (orally, after hearing argument of counsel):

"This is a motion to dismiss the complaint in an action brought by a property owner of Los Angeles and in which the City of Los Angeles has intervened as a party plaintiff, to require the Housing Expediter to terminate rent controls in the City and County of Los Angeles in the State of California.

Section 204, subsection (j) (3) of the Housing Act of 1947 (U. S. Code, Title 50 App. Sec. 1894) reads in part as follows:

> "The Housing Expediter shall terminate the provisions of this title in any incorporated city, town or village upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law and based upon a finding by such governing body reached as the result of a public hearing held after ten days' notice, that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village;" . . .

It appears from the complaint, as well as by a stipulation of facts filed in connection with this motion, that the governing body of the City of Los Angeles, the City Council, held a public hearing after ten days' notice, at which a vote was taken on the question whether rent control should be terminated; that the City Council made the finding referred to in the statute and that it passed a resolution in accordance therewith.

It is claimed, however, that mere compliance with the prerequisites of the statute are not conclusive upon the Expediter, but that he has a right to go behind the findings and the resolution and determine whether the findings are justified by the evidence introduced at the hearing. In this case the Expediter apparently declined to act on the basis of the resolution, because he found that the evidence did not justify the conclusions reached.

In examining the statute it must be noted that it is provided that the Housing Expediter "shall" terminate rent controls, not "may" terminate rent controls, if certain prerequisites are complied with. To be sure, there are occasions on which the word "shall" is construed to mean "may", but there must be a showing why such a construction should be reached. It is the exception rather than the rule. The Expediter no doubt has a right to determine whether there has been a public hearing, whether ten days'

notice has been given, whether a resolution was passed and appropriate findings made, but it seems to the Court that he may not go behind the resolution if the formal steps have been complied with. He may not review the evidence introduced by the City Council or other governing body.

The statute is clear and it hardly seems necessary to have recourse to extrinsic aids to construction which would be helpful if the statute were ambiguous.

It is significant, however, that the Report of the Committee on Banking and Currency of the House of Representatives on this legislation, House Report No. 2116, 81st Congress, 2nd Session, expressly stated:

> " . . . the action of the local governing body in the matter would be final and not subject to review, approval, or change by any other authority."

Previously, and in the same paragraph the report contains the following significant language:

> "The Office of the Housing Expediter is directed to remove rent control from any area where the demand for housing appears to have been reasonably met."

Whether the demand for rental housing appears to have been reasonably met is to be determined, according to the statute, by a resolution of the governing body.

It is also urged that the resolution was not adopted in accordance with applicable local law, in that the requirements of the local law relating to the passage of ordinances were not fulfilled. This resolution, however, is not to be dealt with or considered as a city ordinance, and therefore the requirements applicable to city ordinances will not govern the resolution contemplated by this Act.

In view of these considerations the motion to dismiss the complaint is denied."

November 6, 1950.

FILED
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CHARLES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 426

CITY OF LOS ANGELES, etc., et al., *Petitioners,*

v.

TIGHE E. WOODS, Housing Expediter, etc., et al., *Respondents.*

MOTION FOR EXPEDITIOUS ACTION.

Now comes petitioners herein and respectfully move this Court to require respondents herein to file their brief if they desire to oppose this petition for a writ of certiorari in such time as will enable this Court to consider the granting of said petition on or before December 9, 1950. If the normal period of thirty days is allowed Respondents under Rule 38 (3) of the rules of this Court, the Housing and Rent Act of 1947, as amended, will have expired prior to the time for filing opposing briefs. The Act expires on December 31, 1950. The decision in the case by this Court before that time is urgently needed to end the uncertainty and confusion existing in approximately 3,000 cities throughout the country as the result of the decision of the lower court.

In approximately 1,000 cities Federal rent control has been terminated, or continued to June 30, 1951, by findings of fact incorporated in resolutions of local governing bodies. The decision of the lower court holds that such action is a legislative act and is invalid when done by resolution rather than by ordinance. Approximately 2,000 other cities have not acted and may wish to continue Federal rent control for 6 months beyond December 31, 1950, and these 2,000 cities must make their finding of fact before

the Act expires on December 31, 1950. Many of these cities do not have time to incorporate their findings of fact into an ordinance, and not wishing to act illegally by resolution, they may not be able to get the benefits of the Federal Act at all. It is therefore urgent that this Court finally determine before that date whether those cities which have already acted have done so illegally, and thus allow time for those who can to correct their action, and also allow those cities wishing to extend rent control to June 30, 1951 by resolution to do so.

For these reasons and the reasons set forth in the Petition for a Writ of Certiorari herein it is respectfully urged that the early action here prayed for is essential and in the public interest.

Respectfully submitted,

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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 426.

CITY OF LOS ANGELES, etc., et al., *Petitioners,*

v.

TIGHE E. WOODS, Housing Expediter, etc., et al., *Respondents.*

SUPPLEMENT TO MOTION FOR EXPEDITIOUS ACTION CONTAINING AUTHORITATIVE CONGRESSIONAL INTERPRETATION AND RESPONDENT WOODS' ADMISSION THAT COURT OF APPEALS DECISION IS ERRONEOUS.

In view of the national interest in expeditious action herein, it is believed well to present to the Court the statements of the Congressional authors of the Housing and Rent Act and the admissions of the Respondent, Mr. Tighe E. Woods, and of his General Counsel, Mr. Dupree, that the Court of Appeals of the District of Columbia Circuit committed error in the decision in this case that the word "resolution" adopted in accordance with local law in that Act must be interpreted as "ordinance" adopted in accordance with local law applicable to ordinances.

On November 29, 1950, at the hearing before the Committee on Banking and Currency of the United States Senate, 81st Congress, Second Session on S. J. Resolution 207, during the testimony of Mr. Tighe E. Woods, Housing Expediter, the following discussion took place (pp. 22-24):

"MR. WOODS. . . . A recent appellate court decision has cast serious doubt upon the validity of resolutions for continued control already passed by some 800 various municipalities. In defining the term 'resolution,' the United States Court of Appeals for the District of Columbia, in an opinion dated November 24, 1950, involving a decontrol resolution of the city of Los Angeles, stated:

'Congress intended that the resolution described in this statute be a legislative act.'

It was further stated that the resolution for decontrol—

'requires the exercise of legislative power by the governing body of a city.'

The court made clear that a simple fact-finding or administrative resolution is not sufficient. The municipalities' actions are legislative and must be clothed with all the requirements for passage of an ordinance. In fact, the court stated that the use of the word 'resolution' instead of 'ordinance' in the Federal statute is of no importance. In view of the similarity of language in the 'continued control' and 'decontrol' sections of the act, the question arises whether the communities are not required to act by a legislative process in order to preserve rent control after December 31.

THE CHAIRMAN. What is that again?

MR. WOODS. This is new and very serious.

SENATOR CAPEHART. As a member of the committee that passed that bill you can tell that judge he did not know what he was talking about, as far as my mind was concerned.

MR. WOODS. My mind too, sir.

THE CHAIRMAN. That is true because the congressional debate will clearly show that. As I remember, and it has been a long time ago, we did not go into the

connotation of 'ordinance' or 'resolution' but we went into the question of governing bodies and what laws may govern them because in some sections cities act by resolutions and in other places they act by ordinances, as I remember. Am I wrong?

I cannot figure that one out now.

Mr. Woods. We cannot either.

The Chairman. The Congressional Record might throw some light on this point.

Mr. Woods. We have every reason to believe that the vast majority of the local governing bodies construed the act, as did this agency, to permit them to take action continuing control by simple resolution, as distinguished from legislative acts attended with the formalities of ordinances. These formalities vary from city to city depending upon the language of the particular charter, but they generally provide for notice by publication and lapse of a prescribed period of time after notice before becoming effective to permit referendum action, and so on.

While we cannot state that the view of the Court of Appeals for the District of Columbia will be followed by other courts, still we cannot escape the fact that this decision, being the only court of appeals decision on the subject to date, raises serious question as to the validity of all resolutions, both for continued control and for decontrol.

Senator Bricker. Have you appealed that?

Mr. Woods. It just happened last week, Senator. We do not know as of today—I will let Mr. Dupree tell you.

Mr. Dupree. We cannot appeal it, Senator. We won the case but we did not urge this ground. The court decided it on this ground and we were urging another ground. We won the case so we cannot appeal.

The Chairman. You won a case but you lost the issue. It was the distinct understanding of this committee—and I want this on the record and want somebody to correct me if I am wrong—that the city did not require a definite 'legislative process' or definite type of legislation, according to the words you read here. That is why this committee took a long, long time to write those words in there to authorize action by a

'resolution' as being less restrictive than an ordinance or by such other type of action as the local law may demand.

SENATOR DOUGLAS. I do not want to usurp Senator Tobey's position as the official quoter of classical aphorisms, but would it be appropriate to say that in trying to knock out the Los Angeles decontrol ordinance you were 'hoist with your own petard.'

SENATOR FLANDERS. If I may add to that: 'Tis the sport to have the engineer hoist with his own petard.'

The CHAIRMAN. I am going to take the liberty to ask permission to have printed in the record section 5 of the Housing and Rent Act of 1950, the substance of which says, 'in accordance with applicable local law.' We discussed that in this committee for a long, long time.

(The section referred to follows:)

'SEC. 5. Section 204 (j) (3) of the Housing and Rent Act of 1947, as amended, is hereby amended to read as follows:

'(3) The Housing Expediter shall terminate the provisions of this title in any incorporated city, town, village, or in the unincorporated area of any county upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law and based upon a finding by such governing body reached as the result of a public hearing held after ten days' notice, that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town, village, or unincorporated area in such county: *Provided*, That where the major portion of a defense-rental area has been decontrolled pursuant to this paragraph (3), the Housing Expediter shall decontrol any unincorporated locality in the remainder of such area.'

SENATOR BRICKER. The term was generally considered as a generic term, whatever the council held, a resolution, ordinance and so on, in accordance with the way they act.

The CHAIRMAN. You remember that very well?

SENATOR BRICKER. Oh, yes, sir.

Mr. DUPREE. Senator, may I say this: As we understand it the court in its opinion made a distinction between a simple resolution which most cities passed—and we know that all they passed was a resolution, which was forwarded to us, and we felt that was all that Congress intended should be necessary. But the court says you didn't mean a resolution, you meant a legislative act which is in the nature of an ordinance. Most cities, if not all, have different standards or formalities for the passage of resolutions as against ordinances. I agree with you, Senator.

The CHAIRMAN. Here is what the law says:

> 'The Housing Expediter shall terminate the provisions of this title in any incorporated city, town, village, or in the unincorporated area of any county upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law.'

That is what the law says.

Mr. DUPREE. I certainly agree with you.

The CHAIRMAN. We took a lot of time on that.

Mr. DUPREE. I know you did and I agree with you.

Mr. WOODS. If I may add, Senator, we O. K.'d almost 400 of these resolutions without question. We just looked to see if they were passed with applicable local law, until this decision which was a surprise to us, too. But it is on the books of the appellate court of the United States.

The CHAIRMAN. Well, this discussion is going to be on the record of the Banking and Currency Committee, for whatever clarifying value it may have.

Mr. WOODS. Communities that have already passed resolutions could examine their actions and, when necessary, adopt resolutions with the necessary formalities of a legislative act. But they do not have the time to do that between now and December 31. Other communities, which planned to act between now and the end of the year upon the belief that only a simple resolution was necessary, may find that they do not have time.

If I may interrupt my statement here: It is not that we wouldn't pass it, but somebody on either side, a landlord or a tenant, with this court decision could

contest it in the courts and the courts would be flooded with a large number of cases."

This public confession of error by the Respondent in the above-entitled case is believed to warrant summary reversal of the decision of the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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No. 426. CITY OF LOS ANGELES ET AL. *v.* WOODS, HOUS-G EXPEDITER, ET AL. On petition for writ of certiorari the United States Court of Appeals for the District Columbia Circuit. *Per Curiam:* The petition for writ certiorari is granted. The judgment of the Court of ppeals is vacated and the cause is remanded to the

District Court with directions to vacate its judgment and to dismiss the complaint upon the ground that the cause is moot. *Ray L. Cheseboro, Bourke Jones* and *Charles S. Rhyne* for petitioners. *Solicitor General Perlman* and *Ed Dupree* for Woods; and *Hardy K. Maclay, Alexander H. Schullman, David S. Smith, Wallace M. Cohen, Herbert S. Thatcher, Arthur J. Goldberg* and *M. S. Ryder* for Miller et al., respondents. *William H. Emerson, Alexander G. Brown, Walter J. Mattison* and *David M. Proctor* filed a brief for the National Institute of Municipal Law Officers, as *amicus curiae*, supporting the petition. Reported below: 87 U. S. App. D. C. —, 185 F. 2d 508.